No. 5

Brf. of Bowers & Mayes for Pltfs. in Err.

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Supreme Court of the United States

OCTOBER TERM, 1901.

No. 5

THE GULF AND SHIP ISLAND RAILROAD COMPANY, ET ALS.,
Plaintiffs in Error,

vs.

GEORGE P. HEWES, TAX COLLECTOR,
Defendant in Error.

Brief in Behalf of Plaintiffs in Error.

EATON J. BOWERS,
EDWARD MAYES,
For Plaintiffs in Error.

"The Legal Printer," J. G. Hanner, 628 Camp St., N. O., La.

Supreme Court of the United States,

OCTOBER TERM 1901.

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HE GULF AND SHIP ISLAND RAILROAD COMPANY, ET ALS.,
Plaintiffs in Error,

versus

GEORGE P. HEWES, TAX COLLECTOR,
Defendant in Error.

In Error to the Supreme Court of Mississippi.

BRIEF ON BEHALF OF PLAINTIFFS IN ERROR.

This writ of error presents for review a final judgment of the Supreme Court of Mississippi (Record page 15) which affirmed a decree of the Chancery Court of Harrison county in favor of the defendant in error, George P. Hewes, as Tax Collector, against the plaintiffs in error, the Gulf & Ship Island Railroad Company, who were complainants in the court of original jurisdiction.

Ad valorem taxes imposed and levied upon the railroad of the Gulf & Ship Island Company, and a privilege tax, for the year 1896, form the subject matter of the controversy. The litigation originated by a writ of injunction, issued on a bill filed by the railroad company, against the tax collector; which injunction was dissolved on demurrer to the bill.

The railroad company denied liability, upon the ground that, under a valid contract with the state of Mississippi, made in 1882 and still in force, although nearly expired, the property upon which the said taxes were imposed, or sought to be imposed, was exempt from taxation; and also that, by the same contract, the company itself was exempt from the payment of privilege taxes. As the judgment now sought to be reversed adjudges the right of recovery of the taxes in question, and subsequent legislation is thereby enforced, the case arises under the contract clause of the constitution of the United States (Art. 1, Section 10).

The tax collector, defendant below, and defendant here, challenges the jurisdiction of this court; and then, on the merits, contends (1) that the statutory contract relied on by the railroad company was unconstitutional and void from the beginning; and (2), that if valid, it was repealed by subsequent legislation as explained below.

Statement of the Case.

In order that this case may be fully understood, it may be well to review the history of the railroad company whose contract right is now in question, as that history is shown by the public legislation of the state.

The Gulf & Ship Island Railroad was originally incorporated on March 5th, 1850 (see Laws 1850, page 324). This charter did not contain any exemption clause.

By the act of March 16, 1852, the state subscribed for $2,000 of stock, the money paid therefor to be devoted to estimates and surveys (Laws 1852, page 94).

By the act of March 1, 1854 (Laws 1854, page 168), the company's charter was amended; and by Section 11 of the amendatory act it was provided that the "property and investments of the company connected with this enterprise, within this state, *shall not be subject to taxation until the road shall be in full operation and completed.*"

By the act of Aug. 11th, 1856 (11 U. S. Statutes at Large, p. 30), the Congress of the United States granted lands in the state of Mississippi in aid of railroads. This grant was accepted by the State on the 2nd day of February, 1857. (See Laws of 1856-1857, page 104); and on the 3rd of December, 1858, part of the lands so donated by Congress were by the state granted to the Gulf & Ship Island Railroad (See Laws 1858, Called Session, page 118).

By the act of November 18, 1857, the charter of the company was further amended, and the state took $5,000 of stock in the same (Laws 1857, page 37).

On the 10th of February, 1860, the state memorialized Congress, praying for an additional land grant to the Gulf & Ship Island Railroad (See Laws, page 189).

In this memorial, the legislature declares, amongst other things, that "The building of the Gulf & Ship Island Railroad is an enterprise of great importance to the interest and prosperity of the state of Mississippi, and important to the agricultural and commercial development of the western states and northwestern territory"; also that the "federal government is interested in having the means for a speedy transit in time of war to this otherwise almost defenseless coast"; and also that "The lands in the southern portion of Mississippi through which this road is designed to run, are valueless without the success of this enterprise, being valuable for lumber and the production of turpentine alone, which, to be profitable, must have cheap and speedy transportation."

By the act of February 9, 1860 (Laws 1860, page 190), the

state further subscribed for $15,000 additional stock in the company, exchanging for the same, stock which it held in three railroads in the state which had been built.

By the act of November 30, 1860 (See Laws 1860, Special Session, page 34), the counties of Rankin and Madison were authorized to subscribe for stock in said company.

The late civil war having begun, by act of August 2, 1861 (See Laws 1861, page 36), the collection of the railroad taxes in those counties was suspended; and it was further provided that "Said company is hereby authorized to suspend all action until one year at least after such peace shall be restored, without impairing or destroying any right or privilege now belonging to said company."

By the act of January 28, 1862 (See Laws 1862, page 248), all public lands not otherwise appropriated, lying within fifteen miles of the line of the railroad, were granted to the Gulf & Ship Island Railroad Company; *provided,* that such grant should not apply to any lands lying along the projected line "ten miles beyond where the said railroad shall not be finished within twenty years from the passage of this act."

On Nov. 16, 1865 (See Laws 1865, page 477), the legislature adopted a resolution requesting the president and directors of the company to report the condition of the company, and whether there was any reasonable prospect of resuming operation, and when, etc.

On the 30th of October, 1866 (See Laws 1866, page 18) the governor of the state was authorized to appoint an agent to secure a regrant of lands from Congress to the Gulf & Ship Island Railroad, and an appropriation was made to pay the agent's expenses.

In the year 1872, the legislature adopted another memorial to Congress, approved Dec. 14, 1872 (See Laws 1872, page 155), praying for a revivor of the grant made to the Gulf & Ship Island Railroad in 1856.

In this memorial, the legislature says that "Without this road the region of country through which it would pass must remain comparatively a dense wilderness for generations to come; with this road constructed and in operation, this country now so isolated would fill up with a large population, its unsurpassed wealth of timber would become available to the ever increasing demand for lumber, and its agricultural products would find an easy transit to the commercial marts of the world," etc.

On the 19th of April, 1873 (See Laws 1873, page 609), Congress having failed to act upon the preceding memorial, the legislature of Mississippi "believing that the construction of a road from Mississippi City to Helena, Arkansas, *via* Jackson, Mississippi, would lead to the development of the harbor of Ship Island," etc., memorialized Congress, praying for the grant of those lands to the Mississippi City and Helena Railroad. It will be observed that this railroad, as to its route from the Gulf to Jackson, was substantially on the same line with the projected Gulf & Ship Island.

On the 23rd of February, 1882 (See Laws 1882, page 849), a new charter was granted to the Gulf & Ship Island Railroad Company; and section 18 thereof, which is elsewhere herein more fully set forth, provided that all of its property "in this state, necessary or incident to the full exercise of all the powers herein granted, *shall be exempted from taxation for a term of twenty years from the passage of this act.*"

The same legislature, on the 8th of March (Laws of 1882, p. 131) adopted a memorial to Congress praying for a re-grant to the Gulf & Ship Island Railroad of the lands originally granted in 1856. This memorial is quite lengthy, and is printed in full herein in the Appendix, on page 10.

Amongst other things, it sets forth as follows:

> "No enterprise in our state has ever received more repeated and cordial endorsement from our legislature and people than this. At its present session, our legislature

has granted a new act of incorporation with liberal provisions; thus again attesting the continued and earnest interest felt by our people in this important work. It is almost superfluous to dwell on the great benefits to our state which would result from the construction of this road..... It is not our state and its people alone who would reap advantages from the construction of such road. The work would present a semi-national importance in affording to the grain growers of the west and northwest the shortest and cheapest line of transportation to the seaboard," etc.. ...."It is manifest the road can not be built by corporate or individual subscriptions in our own state. The well known pecuniary condition of our people forbids such a hope. But we have good reason to believe that if the former grant of government lands can be revived a substantial basis of credit will be created, and with this material aid assured, there will be no difficulty in enlisting northern and foreign capital to insure the early completion and equipment of the road," etc.

Congress, moved no doubt by this memorial, exempted the grant in aid of the Gulf & Ship Island Railroad from the general forfeiture act of Sept. 29, 1890 (U. S. Statutes at Large, Chapter 1040, page 496), and by Section 7 of said act all lands lying south of the junction of this road with the New Orleans & North Eastern Railroad—Hattiesburg—were saved to the road. The act in question referred to the grant as "A grant of land to the "state of Mississippi, for the purpose of aiding in the construc- "tion of a railroad from Brandon to the Gulf of Mexico, *com- "monly known as the Gulf & Ship Island Railroad.*" The act of the Mississippi legislature, December 3rd, 1858, designated this road as the recipient of the grant, and the memorial of 1882 dealt with a grant made by the Government in 1856 in aid "of "the construction of the Gulf & Ship Island Railroad"; *to which*

road, the memorial recited, "the legislature at its present session "has granted a new act of incorporation with liberal provisions, "thus attesting the abiding and earnest interest felt by our peo- "ple in this important work." It is therefore apparent that this corporation dates from the act of March 5th, 1850, and that the act of 1882 was merely the recognition and continuance of an existing corporation with well defined charter rights.

On the 13th day of March, 1884 (See Laws 1884, page 971), an act was passed "To facilitate the construction of the Gulf & Ship Island Railroad, and for other purposes," which provided, amongst other things (Section 8), that "Said Gulf & Ship Island Railroad Company is hereby subrogated *to all the rights and privileges* heretofore granted by the state of Mississippi to the Gulf & Ship Island Railroad Company; and shall have the right to sue and enjoy such field notes, maps, and surveys as have been heretofore made in the interest of said road as were authorized and granted by the state under acts approved March 2, 1854, and December 3rd, 1858."

The original bill in this cause (filed Jan. 1, 1897) shows that complainant then had in operation a line of railroad running from Gulfport, in the county of Harrison, in said state, to Hattiesburg, in the county of Perry, in said state, a distance of 70.22 miles, as well as a branch line running from Gulfport in said county and state, to Handsboro, a distance of about four miles, which branch line was constructed by complainant during the month of November, A. D. 1896.

Since this bill was filed, the same railroad has been further completed from Hattiesburg to Jackson, Mississippi, and is now in daily operation from Jackson to Gulfport.

It may aid the court to dwell for a little upon the origin of the legislation in question.

In *M. & O. Railroad vs. Tennessee,* 153 U. S. 486, 502, which

dealt with an exemption from taxation in a railroad charter, it was said:

> "Legislative contracts, especially, should be read in the light of the public policy entertained, and the purposes sought to be accomplished at the time they were made, rather than at a later period when different ideas and theories may prevail."

From the year 1870, in which year was convened the first legislature of Mississippi after the ratification of the constitution of 1869, until after 1882, the legislature of that state deemed it necessary for the public good to invite the investment of capital, and especially of foreign capital, in the construction of railroads. The resources of the state could not be developed without railroads, and all progress made would, according to the view which then obtained, be stayed unless means were found for this necessary public improvement. The public treasury was bankrupt, and the public credit was shattered. The issue of state bonds in aid of public improvements undertaken by railroad corporations, even if the bonds could then have been marketed, was impracticable, for the constitution recently adopted had prohibited the pledging or loan of the credit of the state (Constitution 1869, Article XII., Section 5).

The levy of a general tax to assist in the building of railroads would have been fruitless, as well as an unbearable burden upon a ruined community, for at that time the condition in Mississippi was indeed miserable. The resources of the state had been exhausted by the struggles and sacrifices of the civil war. The great revolution in industrial, agricultural and economic conditions, resulting from that terrible strife and from the emancipation of the slaves, had left the community so poor that with difficulty could the inhabitants bear the burden of the taxes necessary for maintaining the local government.

The public records show that millions of acres were being abandoned and forfeited to the state for non-payment, even of

such taxes as were needed to be raised for the ordinary expense of the state.*

Even as late as 1881, we find the state raising funds for levee purposes by selling nearly two million acres of forfeited lands of the levee board, and such sales, as is matter of common knowledge in Mississippi, were made at the incredibly low figure of 12½ cents per acre (See note p. 10 below).

The distress of the community was set forth in petitions from the legislature to Congress. The paramount interest of the whole community was clearly the building of railroads so as to afford means of communication and transportation, thereby developing the resources of the state, yet the nature of the country was such (in some parts its topography, in others its poverty, and in all the sparseness of its population) that both the construction and the maintenance of railroads were unusually difficult and doubtful; and railroad enterprises then, and for many years, gave no promise of profit.

Looking especially to the country through which it was proposed to build this railroad denominated the Gulf & Ship Island, it is to be observed that we have the explicit declaration of the legislature of Mississippi itself, addressed to Congress in the memorials hereinbefore mentioned:

1. In memorial of 1872 (Laws of 1872, page 155), in which it was said that "Without this road, the region of country through which it would pass, must remain comparatively a dense wilderness for generations to come";

2. In the memorial of 1882 (Laws 1882, page 131), that

> "This liberal and valuable donation was lost by no supineness or indifference of our people, but by the interruption of all works of internal improvement caused by the late war; and since its close, to the prostration and poverty

*Appendix to Senate Journal, 1870, pp. 20-25; id. 1871, p. 1 (Gov. Alcorn's Message); id. (List of Lands held by the State); Laws of Miss. 1878, pp. 243-245; Appendix to Senate Journal, 1882 (Gov. Lowry's Message); Laws 1882, p. 124; Murdock vs. Chaffe, 67 Miss. 740, 750.

> which it entailed..... It (the railroad) would speedily populate and develop the resources of a large section of our state hitherto isolated, and neglected for want of facility of access..... It is manifest the road can not be built by corporate or individual subscriptions in our own state. The well known pecuniary condition of our people forbids such a hope. But we have reason to believe that if the former grant of government lands can be revived, a substantial basis of credit will be created, and with this material aid assured, there will be no difficulty in enlisting northern and foreign capital to insure the early completion and equipment of the road."

In such condition of affairs, it must appear to all candid minds that the legislature exercised a wise forethought when it determined that the only chance of railroad development and improvement was to induce the investment of capital belonging to the inhabitants of more prosperous states. The legislature did undertake, avowedly, to induce foreign investors to build railroads in the state, thus to provide the necessary means of communication and transportation upon which, as it conceived, and conceived correctly, future progress and development and prosperity depended.

The state was in the attitude of soliciting subscriptions of foreign capital in the formation of railroad corporations, endeavoring to induce investors to undertake the risk of necessary public improvements for the benefit of the people of the whole state, with the hazard of loss, and, perhaps financial ruin, to the promoters, and by offering a temporary exemption from taxation as a consideration, by way of contract, for the acceptance of its proposals.

The charter which was granted in 1882, pursuant to this policy, to the Gulf & Ship Island Railroad, and on which the bill in

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Note 2—Department Reports 1882, Report of Commissioner of Immigration, pp. 11, 19; Murdock vs. Chaffe, 67 Miss. 740, supra; Laws of Miss. 1888, p. 40.

this case for relief is based, was one of these cases; and it says in express terms as follows, in Section 18:

> "That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this state will and will not impose thereon, it is hereby declared that said company, its stock, its railroads and appurtenances, and all its property in this state, necessary or incident to the full exercise of all powers herein granted, shall be exempt from taxation for a term of twenty years from the passage of this act," etc.

Nor does this act stand alone. The extent to which such policy was adopted by the legislature may be judged from the fact that, during the session of 1870, ten railroad companies were incorporated, with each of which the legislature made a charter contract appropriating annually in aid of the company, the taxes to which such company should be liable for a term of years; and eight companies were similarly incorporated during the session of 1871, twelve during the session of 1872, and eleven during the session of 1873. Between 1870 and 1884, inclusive, forty-four railroads were incorporated, with each of which a contract of appropriation of taxes in aid, was made by the legislature on behalf of the state of Mississippi; and forty-two other railroads were incorporated, which were granted exemptions similar to that granted in the case at bar.

In nearly all of these charters, whether of contract of appropriation of taxes, or whether a plain exemption like the one at bar, the privilege or immunity was expressly stated to have been given as an inducement to investment in the railroad projected.

A list of these charters is set forth in the Appendix to this brief, pages 19 to 24.

The proposals made by the state in such charters were, in

several instances, accepted and performed in good faith, and they were accepted and performed in good faith by the Gulf & Ship Island Railroad Company.

In 1860, there were 862 miles of railroad in Mississippi (Poor's Manual, 1897, page XVI.); in 1880, just before the granting of the new charter involved in this case, the total mileage had increased to 1127 (*ib.*); in 1886, after the completion of the Louisville, New Orleans & Texas Railway, incorporated in 1882, the total number of miles was 2,111 (Poor's Manual, 1897, page XI.); and this was increased to 2,552 by the year 1896 (Poor's Manual, 1897, page XVI.).

When this bill was filed, as it shows, in January, 1897, the Gulf & Ship Island had constructed its line from Gulfport, on the Gulf of Mexico, to Hattiesburg, a station on the railroad which runs from New Orleans to Meridian, and thus had already opened up the lower central portion of the state of Mississippi, as had so long been desired by the legislature.

The result of the construction of railroads under the policy outlined above, has been such as to increase the value of property in the Mississippi delta district and in the pine land district of south Mississippi, penetrated by railroads under this system of legislation, to an enormous extent, and to convert into territories of great value, and vast productiveness either of cotton or lumber, lands which prior thereto, were almost absolutely worthless, and the state and counties now collect from this territory immensely increased revenues, without any increase of the rate of taxation.

Specification of Errors.

The plaintiffs in error assert, and intend to urge and rely upon, the following errors of the court below, viz:

1.—That the court erred in holding that the provision of section 18 of the charter of 1882 did not constitute a valid and irrepealable contract between the state and the railroad company under the Mississippi constitution of 1869.

2.—The court erred in holding that such exemption contract originated with the charter of 1882, and not under the charter of 1854, and that the same was subject to the constitution of 1869.

3.—The court erred in holding that the constitution of 1869 prohibited the making of an irrepealable contract for exemption from privilege taxation.

4.—The court erred in holding that the exemption contract herein claimed, was not ratified and continued by section 181 of the constitution of 1890.

5.—The court erred in permitting recovery of taxes under and by virtue of revenue laws passed subsequent to the charters of 1854 and 1882, and thereby giving effect to statutes which impaired the obligation of the contract in suit.

The questions arising in this case may, in a general way, be stated as follows:

1. *The jurisdiction of this court.*

2. *The constitutionality, as to property taxes, of the act of 1882, containing the exemption.*

3. *The constitutionality of the same act, as to privilege taxes.*

4. *The effect of Section 181 of the Constitution of 1890.*

5. *The impairment of the contract of exemption by subsequent legislation.*

1.—The Jurisdiction of This Court.

The jurisdiction of this court to review the decision of the Supreme Court of Mississippi, is challenged on three grounds:

1. No federal question is raised or involved.

2. No federal question was raised at the proper time or in the appropriate way.

3. The exemption claimed was repealed by the provisions of the Mississippi Code of 1892, and the charter relied on was granted after the decision of the case of *Mississippi Mills vs.*

Cook, 56 Miss. 40, which held that exemptions were repealable at the will of the legislature.

That a federal question is involved in this cause seems too plain for disputation.

The original bill to enjoin the tax collector of Harrison county was filed January 1, 1897. It charges (See Record, pages 2 and 3), in express terms, the incorporation of the Gulf & Ship Island Railroad Company on the 23rd of February, 1882; and it sets forth in full the eighteenth section of the charter of incorporation, which provided as follows:

> "*Be it further enacted,* That in order to encourage the investment of capital in the works which said company is hereby authorized to construct and maintain, and to *make certain in advance* of such investment, *and as an inducement and consideration therefor,* the taxes and burdens which the state will and will not impose thereon, it is hereby declared that said company, its stock, its railroads, and appurtenances, and all its property in this state, necessary or incident to the full exercise of all the powers herein granted, shall be exempt from taxation for a term of twenty years from the passage of this act."

The bill further charged that "By the terms of said Section 18 the property of complainant" was "exempt from any and all taxation," up to the 23rd day of February, A. D. 1902. The bill further charged that notwithstanding the exemption aforesaid, which "is in full force and has never been repealed, the Railroad Commission of the state of Mississippi have, in violation of the rights of complainant, returned its said property for taxation, and have forwarded to George P. Hewes, tax collector of Harrison county, the assessment of the valuation of property of complainant," etc.

The bill also charges that the tax collector has notified the complainant that unless the taxes are paid within the time prescribed by law, he, the tax collector, would proceed to collect

such amount by distress and levy upon the property of complainant; and it charges that the said taxes are, for the reason aforesaid, illegally demanded of complainant.

This original bill being filed on the first day of January, 1897, was filed, "In an obvious reliance upon the two previous decisions of the Supreme Court of Mississippi," to-wit: The *Mississippi Mills* case, 56 Miss., page 40, and the *Lambert* case, 70 Miss., page 779; just as this court remarked in the case of *Yazoo, etc., R. R. Co. vs. Adams,* 180 U. S., page 1, occurred when the railroad companies in that case went to trial.

And the original bill in this case set forth the right and claim of the company to its exemption as a contract in terms quite as full and complete as those terms which were employed by the railroad companies in the *Adams* case in their plea. As the court will see by referring to the transcript of record in the case of *Y. & M. V. R. R. Co. vs. Wirt Adams,* page 55 (which transcript appears in this court under the file number 17,341), it will be seen that the plea of the railroad company did nothing more than to identify the company and connect it with its charter; to set up its right of appropriation of taxes, and to allege performance of the conditions on which that appropriation was to be enjoyed.

It was claimed in that case, as here, that this court had no jurisdiction because no federal question was involved. But this court denied that claim, and held that under such plea the "federal question was necessarily involved and must have been passed upon at the first hearing."

This court said as follows:

> "In short, the case is one of those frequently arising under the second clause of Rev. Stat., Sec. 709, in which the validity of a state statute under the constitution of the United States is necessarily drawn in question, and the decision of the state court being in favor of its validity, this court will take jurisdiction, though the federal question be

not specially set up or claimed. As we have repeatedly had occasion to hold, it is only in cases arising under the 3d clause of the section, where a right, title, privilege, or immunity is claimed, that the federal question must be specially set up."

Secondly.—The second ground alleged for dismissal for want of jurisdiction is that "No federal question was raised at the proper time or in the appropriate way."

This ground is effectually disposed of by the preceding paragraph. We have shown that the federal question was necessarily involved from the beginning, and that it did not need to be expressly raised. Wherefore, it follows as a necessary conclusion that it was raised at the proper time, if it was involved from the beginning; and also that it was raised in *an* appropriate way, even although it might be said that it might properly also have been raised in some other way.

But the plaintiff in error is not compelled to rest this branch of its case on the preceding argument. Out of the abundance of caution, it amended its bill in the trial court, on the 27th day of September, 1897 (See Record, pages 8 and 9); and in the said amendment it *expressly* set up the exemption as "a contract between the incorporators and stockholders of complainant corporation and the state of Mississippi"; and it was further averred that the Board of Supervisors of Harrison county contended "that said exemption from taxation *has been repealed by the provisions of the Annotated Code of 1892*," and complainant averred both that such contention was untrue, and also averred that "To permit the state to repeal its contract of exemption so entered into by it would be a violation of the tenth section of article 1 of the constitution of the United States"; and complainant *expressly* pleaded the protection of such section and article against any repeal of the exemption.

To the bill so amended, the chancellor sustained a demurrer (Record, page 11); and from his decree in the premises, the ap-

peal was taken to the Supreme Court of the state of Mississippi, on which the judgment of affirmance was rendered, from which judgment of affirmance this writ of error was prayed.

Thus it appears that the contract clause of the constitution of the United States was not only necessarily involved from the beginning, but it was also expressly set up by the amended bill, was demurred to, and the demurrer sustained.

It is true the Supreme Court of Mississippi, in deciding this cause, delivered no written opinion. The cause was decided on the 8th day of May, 1898 (See Record, page 15), and no written opinion was delivered for the manifest reason that the court considered the expression of its views contained in the case of *Wirt Adams, State Revenue Agent, vs. Y. & M. V. R. R. Co.*, delivered on the 20th of February previous, to be sufficient.

It was impossible for the chancellor to sustain the demurrer and for the Supreme Court to affirm that judgment without finding that the sections of the federal constitution specifically pleaded constituted no bar to the demand for taxes. This case is directly covered by the following language of Justice Brewer in *Williams vs. Eggleston*, 170 U. S., p. 304:

> "Inasmuch as plaintiff in error, when sued in the state court, specifically set up certain sections of the federal constitution as a bar to the proceedings against him, and the judgment of the state court was that they presented no such bar, it is not open to question that this court has jurisdiction, and the motion to dismiss must therefore be overruled."

Moreover, the Chief Justice of the Supreme Court gave his certificate that legislation of the state of Mississippi subsequent to the act of 1882, was drawn in question on the ground of such legislation being repugnant to Section 10 of Article I. of the constitution of the United States, etc. (Record, page 17).

It can not be said that the subsequent legislation complained

of was not pointed out with sufficient distinctness. The amended bill, as has been shown above, expressly set forth that the Board of Supervisors relied upon the provisions of the Mississippi Code of 1892. That is a sufficient indication of subsequent legislation.

But even if no such averment were contained in the amended bill, the fact that the state courts did enforce subsequent taxing laws against the contract right itself is sufficient to give this court jurisdiction, even although in such enforcement the subsequent acts and laws were in no way directly cited or alluded to.

In *New Jersey vs. Wright*, 117 U. S. 648, this court said:

> "Where it is charged that the obligation of a contract has been impaired by a state law, as in this case, by the general tax law of New Jersey as administered by the state authorities, and the said courts justify such impairment by the application of some general rule of law to the facts of the case, it is our duty to inquire whether the justification is well grounded. If it is not, the party is entitled to the benefit of the constitutional protection."

See also in *McCullough vs. Virginia*, 172 U. S. 102, this court held that where the state court places its decision distinctly on the ground that the act in controversy was unconstitutional and void originally, but at the same time it is clear that the judgment of the state court did give effect to subsequent statutes, such judgment would be reviewed by this court, and in reviewing the same, this court is not limited to a mere consideration of the language used in the opinion below, but may examine and determine what was the real substance and effect of the decision. Also, to the same effect, see *Chapman vs. Goodnow*, 123 U. S. 540, 548; *Houston, etc., Railroad vs. Texas*, 177 U. S. 66, 100.

Nor does the case of *Yazoo Railroad Company vs. Adams*, 180 U. S. 41, oppose the foregoing position. It is true that in that case this court dismissed the writ of error; but it did so for reasons which do not touch the case at bar. There the only question

really involved in the controversy was the proper construction of the exemption clause of the charter, and the attempt was to get this court to take jurisdiction on a claim that there were statutes subsequent to the charter which might have been, but were not, relied upon as raising a federal question concerning the construction of the contract. This court emphasized the fact that no state statute whose validity was challenged was pointed out in the record; none was set up in the pleas; none was mentioned in the opinion of the court; that in fact the fourth plea expressly averred that the exemption had never been repealed by the legislature of the state; and this court declared that, "For aught that appears the very statute under which this rule was taxed was in existence before the road was chartered, although others prescribing a different method of assessing and collecting such taxes may have been passed subsequent thereto." Moreover, in that case there was a full and elaborate opinion of the court, showing exactly what the court held and what were the questions mooted, and the opinions showed that no federal questions had been raised in the discussion before the court, and that none was decided by the court. In such case the court held that jurisdiction could not be conferred by the certificate of the Chief Justice alone.

If it should be contended that it was incompetent to raise a federal question by an amendment to the original bill, we reply by a citation to Section 542 of the Annotated Code of Mississippi, 1892, and the following decisions:

Richardson vs. Rolfe, 31 Miss. 616;
Ward vs. Whitfield, 64 Miss. 754;
Smith vs. Harrington, 49 Miss. 771;
Kimbrough vs. Curtis, 50 Miss. 117;
Hanserd vs. Gray, 46 Miss. 75;
Jeffries vs. Jeffries, 66 Miss. 216;

from which it is clear that it is the practice in Mississippi to allow amendments liberally at any stage of the proceedings, and that amendments incorporated in the bill at any time have the

same effect as if they had been originally written therein; besides, by the order sustaining the first demurrer, signed September 13th, 1897, filed September 16th, 1897 (Record, page 8), complainant is expressly given leave to amend his bill, and it must be apparent that this leave was given for the express purpose of permitting the insertion of the allegation raising the federal question. Moreover, there was a written agreement (Record, page 10), that the demurrer should be considered as re-filed to the bill *as amended.*

If it be contended that the federal question was ignored or waived because it was not expressly assigned as error in the Supreme Court of Mississippi, we reply, that the settled practice in Mississippi in chancery cases is to assign one error, *i. e.* that the court erred in the rendition of the decree below, and under this assignment every question is raised. This is especially true where a case stands on bill and demurrer, because but one error was committed, the error of sustaining the demurrer and dismissing the bill.

A resort to the brief filed in that court will demonstrate beyond cavil that the federal questions were fully discussed, and the same fact appears from the certificate of the Chief Justice of the state of Mississippi.

Thirdly.—The third ground of objection to the jurisdiction of this court is to the effect that the exemption was repealed by the provisions of the Mississippi Code of 1892, and that there is a written stipulation in the cause that the charter was accepted and the road constructed after the decision of the Supreme Court of Mississippi in the case of *Mississippi Mills vs. Cook,* 56 Miss. 40, and that such case decided that such exemption was repealable at the will of the legislature.

The fact that the original bill was manifestly filed in reliance upon the rule of legislative power as to the granting of an exemption laid down in the *Mississippi Mills* case; and the further fact that there was a stipulation made in the Mississippi Supreme

Court to the effect that in accepting the charter and constructing the road, the incorporators and stockholders invested their money relying upon the adjudications of the Mississippi Supreme Court in that case, do not deprive plaintiffs in error of the benefit of the federal question otherwise distinctly raised in the record. The bill is to be construed as a whole, so that each allegation must mean something; the contract of exemption was clearly set forth, and by the first amendment to the bill the right of the state to abrogate it was expressly challenged and the protection of the federal constitution specifically invoked. Nothing in the stipulation filed after the cause had reached the Supreme Court, destroyed the force of this pleading. It is manifest that it was the intention of the parties to stipulate that the complainant below was to have such benefit as might accrue to it from the proposition that it had constructed its road relying on the decision in the *Mississippi Mills* case, to the effect that the constitution of 1869 did not forbid the legislature to grant an exemption. No other construction is consonant with reason and no other will permit the bill as a whole to stand.

This question is settled by this court in the case of *Illinois Central Railroad Co. vs. Wirt Adams, Rev. Agent,* 180 U. S., p. 28. There the bill set up an exemption under an act of 1882, set up acceptance of the charter in reliance on the *Mississippi Mills* case, and did not deny the right of the legislature to repeal the statute. But the federal question was raised.

It is idle, we respectfully submit, to contend that such stipulation intended that the complainant constructed its road relying upon the alleged power of the legislature to repeal its exemption whenever the legislature should so desire.

Besides, it is apparent that the Supreme Court of Mississippi decided the federal question raised in this case adversely to plaintiffs in error. Inasmuch as no written opinion was rendered, this court will rely much on the certificate of the Chief Justice as to what was tried and decided and that certificate emphat-

ically and unequivocally states that the federal questions were raised and were decided adversely.

A full consideration of this objection to the jurisdiction of the court, its want of soundness and its want of fairness to the plaintiffs in error, would involve a premature and harassing discussion of the entire history of the legislation germane to this subject and of the adjudications of the state bearing upon these questions. In this immediate connection we suggest that it would be more convenient to this court to consider the effect of the *Mississippi Mills* case upon the jurisdiction of this cause, together with the general merits of the case, and the effect of that decision in connection therewith. It is not worth while to take two bites at a cherry.

The subsequent legislation which is claimed by the Supreme Court of Mississippi to have *repealed* all railroad exemptions is:

1. Act of 1886, Sec. 6 (Laws 1886, p. 23). Appendix, p. 27; and

2. Code of 1892, Sections 3379 and 3744 (Appendix, pp. 21 and 23).

See *Railroad Co. vs. Adams*, 77 Miss. 194, 291-292.

2.—The Constitutionality, as to Property Taxes, of the Act of 1882 containing the Exemption.

The act of 1882 in question was the new charter granted to the Gulf & Ship Island Railroad Company which appears in the Laws of 1882, page 849; and Section 18 thereof, so far as necessary to set forth herein, is as follows:

> "Sec. 18. *Be it further enacted*, That in order to encourage the investment of capital in the works which said company is authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this state will and will not impose thereon, it is hereby declared that said company, its stock, its railroads, and appurtenances, and all its property in this state, necessary or

incident to the full exercise of all the powers herein granted, shall be exempt from taxation for a term of twenty years from the passage of this act."

The court will remember that this new charter of 1882 was granted to the Gulf & Ship Island Railroad Company, which in fact was originally incorporated by the legislature of Mississippi, as shown on page 2 of this brief, on March 5th, 1850: also that by act of March 1st, 1854 (Laws 1854, page 158), the company's original charter was amended, and Section 7 of the amendatory act provided that "The property and investments of the company, connected with this enterprise within this state, shall not be subject to taxation until the road shall be in full operation and completed."

Our argument under this head, therefore, will be reduced to two main propositions:

1.—The exemption granted by the act of 1854 to the Gulf & Ship Island Railroad Company until the road should be in full operation and completed, was not only a contract, but also was irrepealable in its nature, and in this view it is immaterial what was the true intent and meaning of Section 13, Art. XII. of the constitution of 1869, it being beyond the power of the state, even by a new constitution, to impair that contract.

At this late day we take it to be needless to array authorities to this court on the proposition that an exemption of this nature contained in a railroad charter is, in the absence of any reservation of the power to repeal, an irrepealable contract beyond the power of the state to impair, when the charter is accepted.

It is true that the Code of 1857 of Mississippi contained a provision reserving to the legislature the right generally to amend charters; but that provision is immaterial in this cause, because it was enacted three years after the exemption was granted. Prior to the Code of 1857, there was no general law and no constitutional provision in any way restraining the legislature from granting irrepealable exemption contracts.

That the existence of the Gulf & Ship Island Railroad was continuous, that the project had not been abandoned, is shown by the history of the company as previously set forth on pages 2 to 6 inclusive. The court will note, especially, that in the year 1872, on the 14th of December, which was more than three years after the adoption of the constitution of 1869, was approved the legislative memorial to Congress framed for a revivor of the land grant made to the Gulf & Ship Island Railroad in 1856—a clear legislative recognition of the existence of the original railroad company as chartered more than three years after the constitution of 1869 became operative.

If, therefore, it be admitted that the constitution of 1869 was intended to, and did in fact, prohibit the granting of any exemptions whatever to corporations for profit; yet, nevertheless, when that constitution was adopted, there was outstanding an irrepealable and unquestionable grant, and the constitutional provision could not impair it.

Such was the condition of things when the new charter of 1882 quoted above, was enacted. That new charter was accepted.

We may concede that the constitution of 1869 forbade any exemptions by charter, or to a particular corporation, or to corporations in general; yet still, in this particular instance the exemption was valid and effectual legislation, being the mere substitution of one measure of exemption for another. It was not the grant of an exemption originally made; it was a mere change in the duration of that exemption.

In *Memphis & Charleston R. R. Co. vs. Gaines*, 97 U. S. 697, this court held that the legislature of a state can not contract with a company for a surrender of its charter of exemption from taxation, in a way that involves a release from the constitutional mode of taxation, after the charter exemption has expired. But in so holding the court expressly says this:

"There is no doubt of the power of the legislature to

contract with the company for a surrender of its charter exemption in a way that did not involve a release from the constitutional mode of taxation after the charter had expired."

Now, in the Tennessee case, the reason why the new exemption was held to be void was that the stipulations of the contract extended the term or duration of the exemption; while in the case at bar it does not appear that such was the fact. The exemption enjoyed under the act of 1854 extended until after full completion and operation. The substituted exemption under the act of 1882, extended for twenty years from the date of the act. Whatever question might arise if it should turn out that the road should be *"completed and in full operation"* before the expiration of twenty years from 1882, that question is not presented in this case. Here the bill affirmatively shows that when filed the road had only been completed so far as Hattiesburg in the state of Mississippi, and had not then reached its northern terminus. (See the Acts of 1850, 1854, 1882 and 1884 in the Appendix, pages 1 and 2, and 8 to 14 inclusive.)

It can not be said that this contention is not available to the plaintiffs in error for the reason that the original bill placed its right upon the act of 1882. The argument which we make rests upon the value and authority of the act of 1882; and the preceding observations are merely an argument to show why the exemption contained in the act of 1882 is not subject to the rule of the constitution of 1869, whatever that rule may have been. It was the continuation of a valid exemption existing prior to, and if need be in defiance of, the constitution of 1869.

It was not necessary in the state court to plead or prove the railroad charters, those being matters of which the state courts take judicial knowledge. In *Railway Co. vs. Baird,* 76 Miss., page 521, the court said:

"We judicially know that the Georgia Pacific Railroad Company was incorporated in 1882, and that it was author-

ized to construct a road from Aberdeen or Columbus, Mississippi, to the Mississippi river," etc.

See, also, *Mississippi State Railroad Commission vs. G. & S. I. R. R. Co.,* 29 Southern Reporter, page 789.

2.—We now submit as an alternative proposition that even if it were true that the act of 1882 was the original grant of incorporation and exemption, the exemption feature did not violate Section 13, Article XII. of the Mississippi constitution of 1869.

A proper presentation of this question involves a brief review of the legislation and adjudications of the state of Mississippi germane to this subject.

For many years prior to the adoption of the Mississippi constitution of 1869, it had been common for the legislature in granting corporate charters, expressly to reserve the right to tax the property of the corporations created. An idea seems to have obtained extensively in the United States and, if the evidence of a common style of legislation is to be accepted, also in the state of Mississippi, that the grant of a charter of incorporation, especially where the property of the company incorporated served a public purpose and was affected with a public use, exonerated such property from taxation. This idea found expression in the adjudications of the courts.

Worcester vs. Western Railroad Co., 4 Metc. 564.

Lehigh Co. vs. Northampton Co., 8 Watts. & Searg., 334.

Vermont Central Railroad vs. Burlington, 28 Vt. 192.

Burroughs on Taxation, Section 73.

Accordingly, as shown above, we find the legislature of Mississippi, beginning with the year 1833, frequently making express reservation of the power to impose taxes; and the legislature of 1866-1867, in granting the charter of the Bradford Machinery Co. (see Laws, page 471), declared that "The property and effects of said company shall be liable to be taxed as

real and personal estate in this state, is or may be taxed"; and in the charter of the Hashuqua Manufacturing Company, declared that "the stock and property of the company shall be liable to such taxes as shall be imposed by the legislature."

This legislation is especially noteworthy because it was adopted by the last legislature which convened before the adoption of the constitution of Mississippi of 1869, in which is found the article under consideration.

The framers of the constitution of 1869 (who were in session in 1868; for the constitution was adopted in convention on the 15th of May of that year) must have had in mind the history of the antecedent legislation in Mississippi, and undoubtedly by the insertion of Section 13, Article XII, intended to subject all corporations to the power of taxation under the general tax laws. They simply intended to convert into a general constitutional reservation of authority, what had been a common practice in creating corporations, but a practice followed by successive legislatures or not, as they saw proper from time to time in dealing with particular cases.

It was not the intention of such constitutional provision to deny to the legislature the right to grant exemptions, either repealable or irrepealable, which had been a constant legislative practice theretofore. Section 13, Article XII. of the constitution is as follows:

"The property of all corporations for pecuniary profits shall be subject to taxation the same as that of individuals."

In the year 1878, the Supreme Court of Mississippi decided the case of *Mississippi Mills vs. Cook*, 56 Miss., page 40, construing this provision; and the court determined that this section did not of itself prohibit exemptions, but only declared that the legislature should no longer have the power to grant to a corporation an irrepealable exemption. It emphatically announces the rule that the whole subject of exemptions continued to be within the absolute discretion of the legislature of the

state, so far as the actual imposition of taxes was concerned; that each succeeding legislature, after the granting of a charter, should have the right to determine for itself whether or not the property of any particular corporation or class of corporations should in fact be taxed.

This adjudication was conservative. It is in full accord with the expression of this court in *Piqua Branch vs. Knoot,* 16 How. 369, 389, where, speaking of a statutory contract for a specific tax, it is said that "This act, so far from parting with any portion of the sovereignty is an exercise of it. Has it not a right to select the basis of taxation and determine the amount? To deny either of these, is to take away the state's sovereignty. * * * The vague and undefined and indefinable notion that every exemption from taxation or a specific tax which withdraws certain objects from the general tax law, effects the sovereignty of the state, is indefensible."

The authoritative construction of the Mississippi constitution, subsequently reiterated, as is elsewhere shown in this brief, became as much a part of the constitution of 1869 as the text itself.

Douglas vs. County of Pike, 101 U. S. 677.

This principle has recently received recognition at the hands of the Supreme Court of Mississippi itself.

Adams, State Rev. Agt., vs. Bank, 29 Southern Reporter, 402.

That this construction was not strained or unreasonable, is shown by the legislation of Mississippi for many years prior to the adoption of the constitution, as hereinbefore stated. It came to be the thoroughly settled and recognized law in the state, and so continued for a period of twenty years. In the judicial department, it was followed without break or question, as will be seen by reference to the following cases involving in one way or another the question of the constitutionality of exemptions under the constitution of 1869, or in which the power

of the legislature to grant such exemptions was explicitly recognized as a point of departure.

McCullough vs. Stone, 64 Miss. 378; decided October term, 1886.

Y. & M. V. R. R. Co. vs. Thomas, 65 Miss. 553; decided October term, 1888.

Vicksburg Bank vs. Worrell, 67 Miss. 47; decided October term, 1889.

Attala County vs. Kelly, 68 Miss. 40; decided October term, 1890.

L. N. O. & T. Ry. Co. vs. Taylor, 68 Miss. 361; decided January, 1891.

R. R. Co. vs. Lambert, 70 Miss. 779; decided May, 1893.

In the legislative department, also, the same rule was recognized as settled law. At almost every session of the legislature held between the adoption of the constitution of 1869 and the adoption of the constitution of 1890, exemptions from taxation were granted, not only to railroad companies, but to other corporations for profit, which were supposed to serve in some sense a public purpose. The acts granting these exemptions are referred to in the appendix (pages 19 to 24) and exhibit a fixed and consistent course of legislation upon this subject.

We may form some idea of the extent of this policy from the fact that between the years 1870 and 1890, inclusive, at least 120 acts were passed granting exemptions to various corporations. These acts amount to a legislative construction of the highest authority respecting the true meaning of this portion of the constitution of 1869.

This long continued practice of both the legislative and judicial departments ought to be most convincing as to the legality of these exemptions. No rule of interpretation is better settled in this court than that which gives to such practice and interpretation great weight.

In *the Laura,* 114 U. S. 411-416, Mr. Justice Harlan, citing *Stuart vs. Laird,* 1 Cranch, 299, 308, says:

"Touching the objection now raised as to the constitutionality of the legislation in question, it is sufficient to say, as it was said in an early case, that the practice and acquiescence under it, commencing with the organization of the judicial system, affords an irresistible answer, and has indeed fixed the construction."

And in *Ogden vs. Saunders,* 12 Wheat. 213, 290, Mr. Justice Washington said that the doctrine

"Proceeds upon the presumption that the contemporaries of the constitution have claims to our deference on the question of right because they had the best opportunities of informing themselves of the understanding of the framers of the constitution, and of the sense put upon it by the people when it was adopted by them."

In view of the fact that the investment by stockholders and creditors of the railroad company was clearly alleged in the amended bill (Tr. page 9) to have been made in reliance upon this established practice as to exemptions and of the authoritative interpretation of the highest court of the state affirming the constitutional power to exempt, the following language of Mr. Justice Swayne, in *Township of Pine Grove vs. Talcott,* 19 Wall. 666, 677, is singularly applicable:

"When the bonds were issued, there had been no authoritative intimation from any quarter that such statutes were invalid. The legislature affirmed their validity in every act by an implication equivalent in effect to an express declaration. And during the period covered by their enactment, neither of the other departments of the government of the state lifted its voice against them. The acquiescence was universal."

See, also, *Briscoe vs. The Bank of the Commonwealth of Kentucky,* 11 Pet. 257, 318; *Prigg vs. The Commonwealth of*

Pennsylvania, 16 Pet. 539, 619; *Cooley vs. Board of Wardens of Philadelphia et al.,* 12 How. 299, 315; *Auffmordt vs. Hedden,* 137 U. S. 310, 329; *Schell's Executors vs. Fauche,* 138 U. S. 562, 572; *Field vs. Clark,* 143 U. S. 649, 691; *McPherson vs. Blacker,* 146 U. S. 1, 27; *Kennedy vs. Gies,* 25 Mich. 83, 92. The Mississippi authorities are to the same effect: *Daily vs. Swope, Guardian, etc.,* 47 Miss. 367, 383; *French vs. The State,* 52 Miss. 759, 762; *Shotwell vs. Covington,* 69 Miss. 735, 738; *Chrisman vs. Brookhaven,* 70 Miss. 477, 483.

As Simrall, J., said in *Hawkins et al. vs. Carroll Co.,* 50 Miss. 735, 752 (1874):

"At the time of the adoption of the constitution, the power of the legislature to authorize municipal aid to these enterprises, coupled with the delegated authority of taxation, was well established, both by legislative precedents and judicial decisions in this and other states."

And Mitchell, J., said in *State vs. Luther,* 56 Minn. 156, 164:

"This amounted to a legislative construction of the constitution, which of itself would be entitled to great weight."

The Supreme Court of California said in *Emery vs. Reed,* 65 Cal. 351:

"We have frequently said that, with respect to laws passed under the late constitution, the construction put upon them by the highest court in existence under it, would be accepted by us without regard to our own views in respect to the correctness or incorrectness of that construction."

And this court, in *Stearns vs. Minnesota,* decided December 3, 1900, said, on this point:

"It is worthy of notice that the alleged invalidity of this contract, in respect to taxation, was not complained of for thirty years. Whether the revenues of the state were benefitted or injured by this method of taxation we are not advised, but it does

appear that neither party challenged it. Both the railroads and the state accepted and acted under it for nearly a third of a century."

Not until the decision of the Mississippi Supreme Court in *Adams vs. Yazoo & Mississippi Valley Railroad Company* (in June, 1898,) was the theory developed that all exemptions of corporate property were invalid.

Inasmuch as the Supreme Court of Mississippi, in the case of *Railroad Co. vs. Adams,* 77 Miss. 194, decided in June, 1898, has undertaken to criticise and overrule *Mississippi Mills vs. Cook,* and since the amended bill in this case expressly avers that the investments in this railroad were made on the faith of the rule of legislative power expounded in the latter case, and without that rule would not have been made at all (which averment is admitted by the demurrer), it becomes material to study the *Mississippi Mills* case, and also the criticism of it by the recent decision, quite closely. The course of the Mississippi court in the matter has, we submit, set the whole question at large; and this court will, under the circumstances, follow its own judgment, as to the true meaning of Section 13, Article XII.

The discussion of that case, and its overruling, by the present Supreme Court of Mississippi, will be found in 77 Miss. Rep., pp. 272 to 275, inclusive.

It is impossible to consider carefully the case of *Mississippi Mills vs. Cook,* and then to study the criticism of it by the Mississippi court in its later decision, made after the lapse of twenty years, without being impressed with the conviction that the later decision is frequently and fatally in error about the *Mississippi Mills* case; about its reasoning, its holding, and its value.

We must take the liberty of reviewing that part of the opinion in the case of *Railroal Co. vs. Adams, supra,* with the hope that

we can justify and vindicate the *Mississippi Mills* case in the eyes of this court.

With that view, we invite the attention of the court to certain specific passages in the opinion quoted from above, as follows:

1.—The court says that "The case of *Mississippi Mills vs. Cook,* 56 Miss., page 40, expressly held that the legislature had no power to grant an irrepealable exemption, and under that decision the exemption claimed under this section, is manifestly unconstitutional."

The conclusion of the court is manifestly clearly erroneous. If the exemption granted came at all within the purview of the constitutional prohibition, it would not be unconstitutional *in toto,* but only the irrepealable feature of it would be so.

The constitution acting upon the statute would only avoid the statute in so far as it conflicted with the constitution; and the exemption might still stand, being repealable.

It cannot be said that because the legislature undertook to grant an irrepealable exemption its act was wholly void. The rule is well settled that a statute may be unconstitutional in part but not altogether.

"The constitutional and unconstitutional provisions may even be contained in the same section, and yet be perfectly distinct and separable so that the first may stand, though the last fall. The point is not whether they are contained in the same section; for distribution into sections is purely artificial, but whether they are essentially and necessarily connected in substance. If, when the unconstitutional portion is stricken out, that which remains is complete in itself, and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained." (Cooley's Constitutional Limitations, 6 Ed., page 211.)

We submit that if it be granted that the legislature could concede a repealable exemption limited to twenty years, the mere fact that the statute provided that the exemption should be irre-

pealable would not render the exemption void, because, if only the legislature itself sees proper to keep its hands off and not reimpose the tax, the entire scheme of exemption would be wrought out until the period limited had expired.

2.—The court further says of the *Mississippi Mills* case, on page 272, this:

"It expressly held that, while an exemption might be granted, yet it might, at any time, be repealed by the legislature, and, further, that no exemption could be granted to any private corporation for pecuniary profit by a special act extending a special exemption to that special corporation alone; but that in order to make any such exemption valid, it must be extended to all corporations for pecuniary profit of the same class, and in the same situation."

We respectfully submit that in the *Mississippi Mills* case, there was no such holding. It was not decided that no exemption could be granted to any private corporation for pecuniary profit by a special act extending a special exemption to that special corporation alone. No such decision was necessary to the case. This is manifest, for the Supreme Court of Mississippi itself, on the same page, says this:

"The Mississippi Mills did not claim that it had a valid exemption by virtue of a special act granting such special exemption to the Mississippi Mills alone, but that it had such exemption in common with all other factories similarly situated, by virtue of said general law."

If then the Mississippi Mills did not claim an exemption by virtue of a special act, how could it be that in the *Mississippi Mills* case the Supreme Court decided that no exemption granted by a special act was permitted by the constitution? In fact, the factory's act of 1872, which was under consideration in that case, was a general statute applicable to all factories similarly situated; and the Supreme Court of Mississippi itself again says in

the very decision under consideration, that, "The exemption set up here (that is by the Yazoo & Mississippi Valley Railroad, under a special charter), is wholly different. The claim here is that this particular railroad is entitled to this special exemption, which it is conceded is not now and never was extended to all other railroads similarly situated in this state."

Therefore, when the Supreme Court of Mississippi affirms that the *Mississippi Mills* case decided that a special exemption contained in a special charter was unconstitutional, that affirmation is made in the very teeth of repeated affirmations in the same paragraph of the same opinion that no such question was involved in the case.

The court seems to have misapprehended some observations of Simrall, C. J., who delivered the opinion, where he said:

"The 13th section contains no idea of hostility or repression towards corporations for profit. It gives no hint of a policy of discouragement; it contains no rebuke of legislation which pretermits from taxation the corporate property of *an association struggling into existence.* And if the legislature should determine that it was wise and for the general good to pretermit the taxation of all property employed in the manufacture of cotton and woolen cloths or agricultural implements, or household furniture, as a means to encourage investments in these enterprises, there is nothing in the 13th section, or combined with the 20th, which would prevent it. The exemption would be on account of the nature of the property and the use to which it is put. * * * In such cases, in selecting the subject of taxation, it passes by those sorts of property, or property put to a particular use. But distinction in the selection of the subjects cannot be made *because the property belongs to a corporation or individuals,* nor because the owners are poor or wealthy. If the exemption is because of the use, as in manufacturing, it must extend to the like property of individuals. * * * If taxes are imposed on manufacturing property (for illustration) owned by individuals, the like tax shall be paid by corporations; but if the legislature, from considerations of policy, exempts property because of its use and the purpose for which it is employed, the

exemption cannot be given to the corporation as owner, whilst the individual owner is required to pay the tax. That would not be equal or uniform."

Therefore, what Judge Simrall was saying was, not that the legislature could not grant an exemption from taxation in a particular charter, because such grant would not extend to all charters of a similar sort; but his proposition was that if the legislature selected for taxation a certain class of property, it would be unconstitutional for it to tax such property belonging to individuals, and, at the same time, exempt similar property, similarly situated, belonging to corporations, *because* it belonged to corporations. So long as the exemption, according to Judge Simrall's view, was because of the nature of the property and was not with reference to the ownership of the same, the constitution had no prohibition. Wherefore, it seems plain that before an exemption of railroad property, the property of a corporation, can be held to be unconstitutional, it must appear, first, that the exemption was in fact a discrimination against similar railroad property similarly situated belonging to individuals.

3.—The court further says of the *Mississippi Mills* case, that—

"One of the vices of the decision in *Mississippi Mills vs. Cook,* is that it did not hold that all the property of private corporations for pecuniary profit was required to be taxed by the terms of the constitution, Sections 13 and 20, Article XII., just as and when the property of individuals was. Instead of doing this, the court decided that all such property was free from taxation, unless the legislature expressly subjected it to taxation, even though the property of private individuals was taxed, inverting the rule of the constitution. It was certainly an idle performance to declare, as the court did declare, that the whole effect of the constitutional provision was to render the property of private corporations, for pecuniary profit, liable to taxation; that everybody knew, and to so limit the constitutional declaration, was to emasculate it."

Now, the court is wholly in error in stating that the *Mississippi Mills* case decided that such property was free from taxation unless the legislature expressly subjected it to taxation. There is no such decision in that case. What the court held was simply this: That because of the constitutional provision it was no longer competent for the legislature to grant an irrepealable exemption to corporations.

Neither did the *Mississippi Mills* case indulge in the "idle performance" of declaring that "the whole effect of the constitutional provision was to render the property of private corporations for pecuniary profit liable to taxation."

Judge Campbell's first proposition in the leading opinion in the case (56 Miss., page 51), was this:

"It was not intended by Section 13 to confer power on the legislature to tax the property of corporations of the class mentioned. That existed, without this section, as an inherent legislative power."

As repeatedly stated already, the decision was that the effect of the constitutional provision was not to take away from the legislature the power to grant an exemption, but was to take away the power to make an exemption irrepealable.

As elsewhere shown in this brief, the decision in that case *should* have been that the section was intended to settle a rule of taxation about which there was then a doubt: not to "*render* the property of private corporations for pecuniary profit liable to taxation," but to declare that it was so liable notwithstanding the mere fact of its incorporation—a fact which everybody at that time did not know, nor it seems even the Supreme courts in New England.

Moreover, the Supreme Court of Mississippi in the decision of *Railroad Co. vs. Adams,* 77 Miss., draws erroneous and unwarranted inferences from its own interpretation of the constitution. On page 274, it says:

"Sec. 13 of Art. XII. was put in the organic law of the land beyond the reach of legislative control, for the express purpose of formulating a fundamentally great line of public policy prohibiting any difference in the exercise of the taxing power between the property of individuals and the property of private corporations for pecuniary profit. * * * This is the doctrine announced by Cooley and Story, and our construction of the meaning of Section 13, to-wit: that it required the property of private corporations for pecuniary profit to be taxed just as—'the same as'—the property of individuals, so that one would not be exempt and the other taxed, is the identical construction placed upon the same words by the Supreme Court of the United States, and the Supreme Courts of Alabama, Arkansas, California, Florida and Iowa. We prefer now to distinctly align ourselves with the Supreme Court of the United States on this important question and overrule *Mississippi Mills vs. Cook,* in so far as it held that the property of private corporations for pecuniary profit was not, by the constitution of 1869, Sections 13 and 20 of Article XII., expressly directed to be taxed just as the property of individuals."

From this premise, that the constitution meant that the property of corporations for profits should be taxed "just as" the property of individuals was taxed, the court deduces the conclusion that a charter granting an exemption to a private corporation was unconstitutional *because* it was granted in a special charter. There is no doubt about the position; it is clearly defined by the court itself in the case of *The Tombigbee Mills vs. Wirt Adams, Rev. Agent.,* later decided, Southern Reporter, Vol. 29, p. 470.

The conclusion is wholly erroneous, for the reason that it nowhere appears, nor is it a fact, that there is any railroad property in the state of Mississippi owned by private individuals and subjected to taxation.

The idea advanced by the court here was the idea of Judge Chalmers, who delivered the dissenting opinion in the *Mississippi Mills* case, with this difference: Judge Chalmers, because

he held that such was the true meaning of the constitutional provision, deduced the conclusion that "there is no violation of the constitution until some law has been enacted in regard to 'corporate property' which would be invalid if applied to individual property."

He said, "Alike they may be made the subject of a contract of exemption which, when made, shall be irrepealable;" also that while the framers of our constitution "desired unmistakably to place individual and corporate property on the same footing as to taxation, they do not propose in any manner to interfere with that inherent legislative right to contract away the taxing power which the Supreme Court of the United States had for years before the making of our constitution repeatedly declared to exist, except where denied by the organic law."

It is difficult to see how from a constitutional provision which "required the property of private corporations for pecuniary profit to be taxed just as—'the same as'—the property of individuals, so that one would not be exempt and the other taxed," the conclusion can be drawn that the legislature may not grant an exemption to a particular corporation, while it remains unquestioned that it may grant an exemption to a particular individual. No one has yet questioned that under the constitution of 1869, the legislature could have granted a special contract exemption to a natural person. *Judge Chalmers,* on page 68, in his dissenting opinion in the *Mississippi Mills* case says: "My colleagues concede this. They admit that there is nothing in the constitution to prohibit an irrepealable exemption, by contract, of the property of individuals." And the Supreme Court of the United States has said, in *Minot vs. Phil., etc., R. R. Co.,* 18 Wal. 206, that—

"It has also been repeatedly held by this court that the legislature of a state may exempt *particular parcels of property* or the property of *particular persons or corporations* from taxation, either for a special period or perpetually," etc.

And the present Supreme Court of Mississippi, in the *Tombigbee Mills* case cited above, which was decided so late as February 18, 1901, expressly declared that it was not the effect of the constitution of 1869 to prohibit exemptions of property, or even of corporate property; but only to regulate the *mode* of the grant.

How, then, can it be possible that, while the *purpose* of the provision is to require them to be taxed "just alike," as Judge Whitfield, in his opinion, declares it was, yet the *effect* of it is to take away the power to grant even a repealable and temporary exemption to a particular corporation, but leave untouched the power to grant even an irrepealable and perpetual exemption to a particular individual? The conclusion, not only does not follow, but it is even contradictory to the purpose so declared; contradictory because corporations and individuals are not thereby made alike in this matter under the constitution, but corporations are, by such a construction, actually discriminated against.

What then was the true meaning of Section 13, Article XII., of the constitution of 1869? It was exactly what the language of the sentence most naturally imports. The trouble has arisen in an effort to construe what, in fact, but little needed construction. As already pointed out in this brief, the true intent was to provide that notwithstanding the grant of the charter of incorporation to a company whose property should be affected by a public use, such grant should not of itself carry an exemption from liability to the ordinary tax burdens of the general mass of property; but that the property of the company so incorporated for pecuniary profits should be subject to taxation just as the property of individuals was so subject.

It was only by virtue of a charter, which charter was a contract between the artificial person created and the state, that such artificial person could come into being at all. The very birth of such an artificial being was in and by a contract. This was not true in respect to the natural person, that is to say, the "individual."

Wherefore, since the existence of a corporation came through a contract which was protected by the constitution of the United State from impairment, and since there was in the United States a widely disseminated idea (which idea as already pointed out, had received frequent recognition in the legislation of Mississippi) that the bare creation of such a corporation carried, by implication, an exemption from ordinary taxation, but since no such exemption could possibly be implied in and from the bare existence of an individual—the true intent of the constitution was to settle that question, and put the two classes of beings, as to their property, on precisely the same plane.

It is a curious thing that in the three concurring opinions delivered by our Supreme Court in the *Mississippi Mills* case, and in the later opinion delivered by our Supreme Court in 77 Miss., the true meaning of the constitution of 1869, which lies so apparent on the face of the legislative history of the state, should never have been fully gathered. If the court will read the dissenting opinion of Judge Chalmers in the *Mississippi Mills* case, it will be seen that that able jurist was very near to the true solution of this provision, but he did not quite reach it, and, as pointed out above, Judge Whitfield in his opinion in 77 Mississippi states with great emphasis and clearness what the true intent of the provision was, but he deduces, we respectfully submit, a most indefensible and erroneous conclusion.

The foregoing construction of the constitutional provision is the only one which gives any proper efficacy to the concluding words of the sentence. In fact, it is the only one which does not virtually eliminate the concluding words from the provision.

Judge Campbell, in his opinion in the *Mississippi Mills* case, held that the provision was intended to take away from the legislature the power to grant to a corporation an irrepealable exemption, while leaving untouched the power to grant one which was repealable; but this view gives no force whatever to the words "the same as that of individuals." It ignores the clause of

the section which is manifestly intended to be a measure or standard of the extent to which the property of corporations shall be subject; yet Judge Campbell, in his opinion, came very near to the true solution, as is clearly shown on page 52, of 56 Mississippi, where he says:

"The language is not, shall be subject to the same *taxation*, but to 'taxation the same as,' etc. If the language as used is equivalent to 'the same taxation as that of individuals,' it must nevertheless be held that its object and effect were to fix the sort of taxation to which the property of all corporations should be subject, and not to affect the condition of being subject to taxation. The peculiar arrangement of the words 'the same as' suggests as possibly within the contemplation of the framers of the constitution this view, viz: The property of all corporations for pecuniary profit shall be subject to taxation, just as the property of individuals is. That of individuals is liable to taxation. They have not been granted immunity from taxation. Their property is subject to taxation, and so, in like manner, the property of all corporations for pecuniary profit shall be liable to taxation."

But Judge Campbell failed to follow out his accurate and nice analysis of this language to its proper conclusion. Prior to the constitution of 1869, unquestionably the authority of the legislature to grant an exemption, either generally as to classes of property, or specially to natural persons or corporations, was unquestioned, and is unquestionable. How could it be possible, then, to deduce from a declaration that the property of corporations should be subject to taxation the same as that of individuals, a conclusion that the legislature was forbidden to grant an exemption to corporations, as long as it retained the power to grant an exemption to an individual? Yet, manifestly, there is in the constitution of 1869 no prohibition of the pre-existent sovereign right to make an exemption contract irrepealable in its nature with a natural person.

Here is where Judge Simrall erred. In his construction of those words, in his concurring opinion, on page 62, he says:

"That purpose is, the very important mandate that the property of corporations for gain shall *be subject* to taxation like that of individuals. It is mandatory in this: That nothing shall be done, or can be done, which shall withdraw it from perpetual liability to taxation."

The error of Judge Simrall consisted in not seeing, as stated above, that a declaration that the property shall be subject to taxation like that of individuals, did not amount to a prohibition or exemption of corporate property until there was some restriction in the constitution against the exemption of individual property.

This is the express declaration of Judge Chalmers in his dissenting opinion, on page 70. There he says:

"It shall 'be subject to taxation the same as that of individuals.' How is that of individuals subject? In subordination to the legislative right to exempt by contract. So, therefore, all corporate property must be subject also in subordination to the right of exemption by contract or charter."

Judge Chalmers, therefore, saw the true meaning of this constitutional provision, but he failed to re-enforce his argument by the proper setting of the provision in its legislative history and in its judicial reason.

The opinion, on the other hand, of Judge Whitfield in 77 Mississippi, as pointed out above, fails to give any force whatever to these words. Indeed, as also pointed out, his conclusion that the constitution prohibited the grant of either repealable or irrepealable exemptions in a special charter necessarily draws a discrimination between the subjection of corporate property to taxation and that of individuals, and leaves the legislature with the power to exempt in one case but not in the other. Whereas, as he himself declares, the mandate of the constitution, plainly, is that the two conditions shall be the same.

The case of *Y. & M. V. R. R. Co. vs. Wirt Adams,* 77 Miss., is not the last decision of our Supreme Court on the question involved in this case. On the 18th of February, 1901, it decided the case of *Adams, Revenue Agent, vs. Tombigbee Mills,* reported in 29 Fed. Rep., page 470. The question was as to the constitutionality, under the constitution of 1869, of the law of 1882, page 84, which exempted from taxation all manufacturing plants for a period of ten years from the time when the factory should be completed. The court sustained the validity of the act, holding expressly that the constitution of 1869 did not require all property to be taxed, but only prohibited exemptions by special acts; exemptions extending to all property of a similar nature, whether owned by corporations or individuals could still be granted.

Under that decision, in other words, had the exemption or appropriation in suit been applicable to all railroads, it would have been valid; but it becomes invalid because it is a special act limited to one railroad. The position evidently is that the greater power to exempt all railroads does not include the lesser power to exempt any particular railroad. No such distinction, it is submitted, finds authority in the constitution of 1869 or any reason in the nature of the subject matter. The constitution warrants no such classification. What provision of the constitution of 1869 declared that the legislature might exempt cotton factories, but could not exempt railroads? What provision of that instrument declared that railroads could be exempted as a class, but could not be exempted in particular cases? Concede the power to exempt at all—cotton factories or railroads whether belonging to corporations or individuals—and it logically follows that any railroad may be exempted if the public good so requires. The argument in support of the power to exempt mills and factories, but not to exempt a railroad unless all railroad property were included, would reduce the constitutional rule to a mere question of method. Railroads are never identical in situ-

ation, character, route or terminus. Each railroad is *sui generis*. Each touches different points of country, is built under different conditions, tends to foster and develop different interests. It would be manifestly unsound to affirm that all railroads sustain the same relations to the public wants, or must or can be grouped as one in that respect. It should indeed require very plain language in a constitution to evidence an intention to permit an exemption of *all* railroads, but to prohibit an exemption of any one, no matter how differently situated from the other railroads of the state. Yet such an extreme and practically illogical result is what the opinion in the *Tombigbee Mills* case would seem to indicate.

The Mississippi court, in sustaining the exemption involved in the *Tombigbee Mills* case, speaks of the "furtherance of a great and just public policy, always cherished in this state, namely, the establishment of cotton factories." But this is a relatively small consideration when compared with the overshadowing necessity of securing the construction of railroads, which was then impossible without outside capital. Without the railroads, the benefit to be derived from the establishment of the factories would be minimized. The act involved in the *Tombigbee Mills* case was passed in 1882, the same year in which the charter here involved was granted, and after the passage of laws under the constitution of 1869, providing for exemption or commutation of taxes in respect of at least forty-five railroads. The state desired to accomplish the necessary railroad construction without taxing the community. The legislature proposed to capitalists and contractors and material-men and all others who might assist in the construction of the road and receive in return the company's promise of payment that, to the extent of the taxes receivable from the new property created with their funds, it would forego or exempt; provided, in some cases, that those taxes were applied to the payment of debts. It was on the faith of this promise not only that the railroad corporation itself undertook

the construction of the road and invested its capital, but that its creditors risked their funds, their materials and their labor, and it is simply common justice, as it is to the true interests of the state itself, to perform the obligation in good faith. No state has ever profited by a failure to keep strictly its plighted faith. As Mr. Justice Field said, in *Hartman vs. Greenhow,* 102 U. S. 672, 682:

"There is no wealth or power equal to that which ultimately comes to a state when in all her engagements she keeps her faith unbroken."

Not only so; as indicated before in this brief, the legislature and other authorities of Mississippi had submitted to the Congress of the United States the memorial of 1882 in which the renewal of the land-grant made by the United States was prayed for, on the ground, amongst others, that "at its present session, our legislature has granted a new act of incorporation with liberal provisions, thus again attesting the abiding and earnest interest felt by our people in this important work." Amongst the "liberal provisions" contained in such new charter was Section 18, which contained the exemption now sought to be avoided. On this memorial was obtained the renewal of the land-grant by the act of Congress of 1890. Is there not an executed contract here, between the state and the United States?

Stearns vs. Minnesota, U. S. Sup. Ct., decided December 3d, 1900.

We do not overlook the fact that the Supreme Court of Mississippi in its opinion in *Railroad Company vs. Adams,* 77 Miss., while treating the question now under consideration, claimed, on pages 274-275, to be sustained in its view by the following decisions of this court and of the state courts: *Louisville, etc., Railroad Co. vs. Palmes,* 109 U. S. 248; *St. Louis, etc., R. R. Co. vs. Berry,* 113 U. S. 475; *Schurz vs. Cook,* 148 U. S. 408; *Keokuk, etc., R. R. Co. vs. Missouri,* 152 U. S. 303, 310-312;

City of Davenport vs. C. R. J. & C. R. R. Co., 38 Iowa, 633; *The People vs. McCreery,* 34 Calif. 432; *Fletcher vs. Oliver,* 25 Ark. 289; *Palmes vs. L. & N. Railroad,* 19 Fla. 231; and *Mobile vs. Stonewall,* 53 Ala. 570.

An examination of these cases will, however, show that they are no authority for the decision rendered.

The Iowa constitution contained the following provisions:

"Art. 1, Sec. 6.—All laws of a general nature shall have a uniform operation; the General Assembly shall not grant to any citizen or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

"Article 8, Sec. 1.—No corporation shall be created by special laws; but the General Assembly shall provide by general laws, for the organization of all corporations hereafter to be created, except as hereinafter provided.

"Article 8, Sec. 2.—The property of all corporations for pecuniary profit, shall be subject to taxation the same as that of individuals."

Thus, it will be seen that no corporation could be created by a special law, but could only be organized under general laws; and also, it was provided that all laws of a general nature should have a uniform operation; and the legislature was expressly prohibited to grant to any citizen or class of citizens any special privileges or immunities. Under that constitution it would have been no more competent for the legislature to grant an exemption to an individual than to a corporation. There were no provisions in the constitution of Mississippi imposing these restrictions or anything like them; and the Supreme Court of Iowa, while construing Article 8, Section 2, of its constitution, manifestly did so in the light of the other provisions in the same constitution, although the opinion of the court is not fully reasoned out.

The Alabama case arose under a very different statute. The law assailed therein was one which restricted the power of towns

to impose taxes on corporations for profits at a higher rate than sixty cents on one hundred dollars of capital stock. It was not a question of exemption, but a question of discrimination in rate of taxation on property selected as the subject of taxation.

The constitution contained the following provisions:

"Art. IX., Sec. 1.—All taxes levied on property in this state, shall be assessed in exact proportion to the value of such property."

"Art. XIII, Sec. 1.—Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes. All general laws and special acts passed pursuant to this section, may be altered, amended or repealed."

"Art. XIII, Sec. 4.—The property of corporations now existing, or hereafter created, shall forever be subject to taxation the same as property of individuals, except corporations for educational and charitable purposes."

The construction given by Judge Brickell to Art. 13, Sec. 4, was avowedly placed by him on the fact that the same constitution included Article 13, Section 1, and such construction was necessary in order to give it any operation at all.

We quote herein a passage from Judge Brickell's opinion.

The court will see that the Supreme Court of Mississippi, in quoting from that opinion (on page 276), omits to quote the portion of the opinion which we herein give in brackets.

"The argument of appellee, that it was intended only to reserve to the legislature the power of subjecting all corporate property to taxation imposed on individuals, and to avoid the introduction into charters of irrepealable exemptions, or discriminations, cannot be supported. [That purpose was fully accomplished by the first section of this article of the constitution. That section is of itself a full reservation of legislative power, and an ample guaranty against irrepealable exemptions or discriminations, etc., etc. The fourth section was therefore added, in itself self-executing, without the aid, in fact in restraint, of legislative power, subjecting corporate property to the taxation

imposed on individuals. If this is not the effect of that section, it has no office to perform, and is without significance. All it can accomplish would have been accomplished by the first section.] Reading these constitutional provisions in the light of their history, and with due regard to the words in which they are expressed, it is impossible for us to doubt that it was competent for the General Assembly in the imposition of taxes to distinguish or discriminate in favor of corporate property subject to taxation. If property of a particular kind is subjected to taxation and owned by a corporation, it must bear the rate of taxation imposed on individuals. While the constitution inhibits the exemption or discrimination in favor of corporations, it equally inhibits a discrimination against them. Equality in bearing a common burden, which is natural right and equity, is secured alike to the corporation and to the citizen."

Thus, the Alabama decision instead of being an authority for the Mississippi decision, is an authority against it. Consistently with the Alabama decision, it would be impossible to reach the conclusion announced by Judge Whitfield that this clause prevents an exemption in favor of corporations, so long as it is not denied that the legislature may grant exemptions in favor of individuals. The case actually before the court, however, as pointed out above, was not only of exemption, but of a discriminating rate.

The California case did not touch this clause of our constitution in any way. It was a decision upon the equality and uniformity clause; and the conclusion announced by the court as to the meaning of that clause, is in direct conflict with all the Mississippi cases on the same clause from the beginning to the present date, and is in direct conflict with the decision of the Mississippi Supreme Court in the *Tombigbee Mills* case, announced in February, 1901.

The case of *Schurz vs. Cook,* 148 U. S. 408, does not touch this question at all.

The case of *Louisville vs. Palmes*, 19 Fla. 231, and 109 U. S. 248, arose under a constitutional provision as follows:

"The property of *all* corporations, whether heretofore or hereafter incorporated, shall be subject to taxation, unless such property be held and used exclusively for religious, educational or charitable purposes."

It will be observed that this provision contained the word "all;" and did not contain the words "the same as that of individuals," which are contained in the Mississippi constitution. Thus, was omitted from that provision the very measure or standard of the extent to which the property was by the constitution to be subject to taxation.

We have previously argued that these words in the Mississippi constitution can not be ignored. But in the Florida constitution, they were wholly omitted, and the word "all" is inserted.

It is also to be noted that in the cases arising thereon, no question was made as to the meaning of the clause. This court said in their opinion that:

> "It can not be, and is not contended, that, under these constitutional limitations, the legislature of Florida could make an original grant to a railroad corporation exempting its railroad from taxation."

It is to be observed, furthermore, that in making such announcement, the court expressly alludes to Article XI., Section I., of the Florida Constitution, which is as follows:

> "The legislature shall provide for uniform and equal rate of taxation and shall prescribe such regulations as shall secure a just valuation of *all* property, both real and personal, excepting such property as may be exempt by law for municipal, educational, literary, scientific, religious, or charitable purposes."

In the Mississippi constitution, there was no such provision. The enumeration of the purposes for which under the Florida

constitution an exemption might be granted, was a clear exclusion of any other purpose, under the rule *mentio unius exclusio alterius est.*

The case of *St. Louis, etc., R. R. Co. vs. Berry,* 113 U. S. 475, was decided under the constitution of Arkansas, which, just like that of Iowa, set forth above, contained the following provisions:

> "The General Assembly shall pass no special act conferring corporate powers. Corporations may be formed under general laws, but all such laws may from time to time be altered or repealed." Article 5, Section 48.
>
> "The General Assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens." Article I., Section 18.
>
> "The property of corporations now existing or hereafter created shall forever be subject to taxation the same as property of individuals." Article 5, Section 48.

And the same observations made in respect to the Iowa constitution and decision apply here.

The case of *Keokuk, etc., R. R. vs. Missouri,* 152 U. S. 303, originated under the Missouri constitution, which contained the following:

> "Article XI., Section 16.—No property, real or personal, shall be exempt from taxation, except such as may be used exclusively for public schools, and such as may belong to the United States, to this state, to counties, or to municipal corporations within this state."

Thus, it will be seen that here was an express prohibition of any exemptions, and the clause under consideration was in no particular like that in the constitution of Mississippi. We take it that the only reason why this case was cited in the opinion of the Supreme Court of Mississippi, was that in the opinion of this court the previous decision in 113 U. S. was cited *arguendo.*

3.—The Constitutionality of the Act of 1882 as to Privilege Taxes.

Even if it be conceded that the constitution of 1869 deprived the legislature of the power to grant an exemption of corporate *property* under any conditions, and that the act of 1882 is subject to that prohibition; yet still this decision of the Supreme Court of Mississippi must be reversed.

The original bill shows that the tax collector was demanding of plaintiff a privilege tax as well as an *ad valorem* property tax (Record, page 3). And the demurrer to this bill was sustained.

Section 18 of the company's charter, quoted above, exempted from taxation "said company, its stock, its railroads and appurtenances, and all its property in this state," etc.

Here is a clear exemption from privilege taxation as well as from *ad valorem* taxes.

Grand Gulf, etc., R. R. vs. Buck, 53 Miss. 246.

The distinction between privilege taxes and *ad valorem* taxes on property is elementary; and, moreover, has been thoroughly well recognized and settled in Mississippi.

Vicksburg Bank vs. Worrell, 67 Miss. 47.

The prohibition contained in Section 13, Art. XII. of the constitution of 1869, is by its very terms limited to property tax. "The *property* of corporations for pecuniary profits shall be taxed," etc. So runs the section. It seems clear that from this provision no prohibition to the legislature to deal with the matter of privilege taxation can be inferred. The selection of the subjects of taxation by the legislature is an exercise of the sovereign power of the state; and it will not be denied to the legislature in so remote and oblique a manner as must be adopted in order to work out a prohibition against privilege taxes by a prohibition which in its terms is restricted to property tax.

It seems clear that so far as privilege taxation is concerned, even under the constitution of 1869, the matter was entirely

subject to the legislative will, and to that extent the exemption granted in 1882 was clearly constitutional.

4.—The Effect of Section 181 of the Constitution of 1890.

The constitution of 1890 was adopted Nov. 1st, 1890, nearly eight years before the decision by the Mississippi Supreme Court of the case of *Adams vs. Yazoo & Miss. Valley Railroad.* The *Mississippi Mills* case had been standing unchallenged, and received as the accepted law of the state, for more than twelve years when the new constitution was adopted. It had been followed by *McCulloch vs. Stone,* 64 Miss. 378, decided in 1886; by *Yazoo R. R. Co. vs. Thomas,* 55 Miss. 553, decided in 1888; by *Vicksburg Bank vs. Worrell,* 67 Miss. 47, decided in 1889; and by *Attala County vs. Kelly,* 68 Miss. 40, decided at the October term, 1890; and the adoption of the constitution was closely followed by the decision in *Railroad Co. vs. Taylor,* 68 Miss. 361, decided Jan. 26, 1891.

In view of these decisions, and of the legislative history germane to this subject, there can be no reasonable doubt as to what was the common understanding of the framers of the constitution on the subject, or as to what was their intention in the provisions which were inserted into the new constitution.

Adams, Revenue Agent, vs. Bank, 29 Southern Rep., 402, decided Jan. 28, 1901.

Section 13, Article XII., of the constitution of 1869, provided that "The property of all private corporations, for pecuniary profits, shall be subject to taxation the same as that of individuals"; and the Supreme Court of Mississippi had been for twelve years holding that such provision did not take away from the legislature the power of granting an exemption.

The Constitutional Convention of 1890 enacted Section 181, which provided that "The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same

extent as the property of individuals, but the legislature may provide," etc.

Thus, by striking out from the previous constitutional provision the words "shall be subject to taxation the same as," and inserting in lieu thereof the words "shall be taxed in the same way and to the same extent as"—there was a clear intendment to meet the *Mississippi Mills* case and its following cases, and change the rule thereby established. But that same section (181) contained the following sentence:

> "Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature."

This constitutional enactment validates the charter of 1882, even if it be conceded or determined that such charter as originally granted was violative of Section 13, Article XII. of the constitution of 1869.

It is clear that this provision was intended to apply to and preserve exemptions, such as that involved in the case at bar, from the fact that except in the case of two or three small private schools, altogether insignificant in the fiscal system of the state, there were in 1890 no corporations for profits entitled to exemptions which had been granted prior to 1869.

Exemptions had been commonly granted before that time, but they had either never been availed of, or had terminated by expiration of the period for which they were granted, or had lapsed for some other cause. The exemption of the Mobile & Ohio Railroad Company had been surrendered in 1882 in consideration of a release by the state of a debt due from the company (Appendix Senate Journal, 1882, Governor Lowry's Message). Practically all corporate exemptions, therefore, such as are mentioned in section 181 of the new constitution, must necessarily have

been granted under the constitution of 1869; and these were the exemptions which the framers of the constitution of 1890 had in mind, and which they intended in good faith to protect.

These considerations were submitted to this court at the October term, 1899, in the brief filed on behalf of plaintiffs in error in the case of *Y. & M. V. R. R. Co. vs. Wirt Adams, State Revenue Agent,* No. 324; and in that case the same counsel appeared before this court who appear in this; yet, notwithstanding, it has never yet been pointed out to this court, so far as we are aware, to what exemptions the saving sentence in Section 181 is applicable, unless it be applicable to those exemptions now under consideration by this court. There has been a complete failure to advise this court on that point; and it is plain that unless that sentence in Section 181 be applied to this exemption and one or two similar exemptions claimed by litigants recently before this court, and soon to be here again, that sentence is made void and of no effect.

In *State vs. Luther,* 56 Minn. 156, 164, it appeared that after a continuous course of legislation in respect to commuted taxation upon corporations, which was said to amount to "a legislative construction of the constitution, which of itself would be entitled to great weight," a constitutional amendment was adopted requiring the submission of any proposed statute providing for the repeal of a law respecting commuted taxation to a vote by the people. Mitchell, J., said:

> "This language must have been selected and this amendment adopted with reference to the existing legislation and the general legislative policy to which we have referred; and, read and construed in that light, it amounts to a clear recognition of the validity of existing laws providing for this commuted system of taxation of railroad property and lands, and of legislative power to enact such laws for the future. If it did not refer to this, there was nothing to which it could refer. It is, by necessary implication, a validation of past legislation of that kind, and a grant of power to enact it in the future."

In the case of *Stearns vs. Minnesota,* decided by this court on the 3rd day of December, 1900, the decision in *State vs. Luther* was cited, and its reasoning and judgment were adopted and approved; and this court, on writ of error from the Supreme Court of Minnesota, held that a certain statute of that state granting a commutation, conceding the same to have been violative of the constitution of 1858, and void, was nevertheless validated and made good by constitutional amendment of the year 1871.

In that case such validation was effected merely by a constitutional provision that statutes thereafter passed to repeal such laws should be passed in a certain manner. And it might very well have been argued that the constitutional provision only meant that statutes passed to repeal valid constitutional laws, should be passed in a certain manner; but it was not so held, either by the state court or by this court. That court and this court looked through all mere quibbling as to whether an unconstitutional law was a law, and adopted and enforced what was in fact the plain intention of the framers of the constitution.

We submit that this court will adopt the same course in the case at bar.

The legality of exemptions in Mississippi under the constitution of 1869 had been declared and upheld prior to 1890 by at least four decisions of the highest tribunal of the state. The constitution of 1890, therefore, referred to a class of exemptions sanctioned by the legislative practice of many years under the constitution in force, permitted by the universally accepted construction of that constitution, and confirmed and declared by the highest state court. These were the exemptions "to which corporations are legally entitled." The language of Section 181 fairly applies to no other subject matter.

No more persuasive union of all canons of constitutional construction and interpretation can well be imagined than are found in this case as to the legislative power to grant exemptions,

namely (1) a common course of legislation evincing the universally entertained view of corporate liability to taxation, and recognizing the necessity for providing that corporations should be "subject to taxation," which view continued for many years; (2) the adoption of that view of liability to taxation in the constitution of 1869; (3) a judicial inquiry into the validity of claims for exemption, and a judicial declaration of their validity; (4) common and long continued legislative recognition, under the constitution of 1869, of the legality of the exemptions, and repeated refusals by the legislature to repeal such exemptions; (5) continuous acquiescence by the executive department and by those charged with the collection of taxes; and (6) a subsequent constitution, dealing with existing exemptions necessarily created under the constitution of 1869, and confirming those to which corporations were "legally entitled." In truth, the convention which adopted the constitution of 1890 could not have indicated more plainly that it meant to confirm and continue such exemptions as that claimed by this plaintiff in error if it had specifically named and included them in that instrument.

Nor would this court in adopting such view, come into conflict with the decision of the Supreme Court of the state in the case of *Adams vs. Railroad Co.*, 77 Miss. 194. In that case the subject which we are now treating was considered by the court in its opinion, on page 254. The court says:

> "Learned counsel for the railroad companies insist that under Sec. 181 of the constitution, and Sec. 279, in the schedule of the constitution, this exemption was continued. ..... This is a wholly mistaken view of these provisions of the constitution: Sec. 181 preserves only such exemptions as corporations fully organized prior to the constitution were legally entitled to at the adoption of the constitution. Its meaning plainly was that if corporations organized and existing at the date of the adoption of the constitution should retain the precise corporate existence they then had, such exemptions as they legally had should con-

tinue whilst their corporate organizations remained as they were. It has nothing to do with the preservation of exemption to any corporation existing at the date of the adoption of the constitution, which ceased to retain its said precise corporate existence, and became consolidated with another corporation, thereby ceasing to exist. Sec. 279 meant the same thing, to-wit: that charters of incorporation belonging to corporations at the date of the adoption of the constitution were not, in any way, to be infringed by the constitution so long as such corporations retained their precise previous corporate organization. This, and this only, is the whole scope of the two sections. Their plain meaning is in harmony with the whole spirit of the chapter on corporations in the constitution, and cannot be frittered or pared away by ingenuity or refinement."

Thus it will be seen that the Mississippi court refused to allow a ratification by Section 181 on the ground, and on the ground only, that the railroad company then before it had originated, by the consolidation of 1892, and after the constitution of 1890 became operative; and that it was not intended by Section 181 to do anything more than to preserve the exemptions to corporations existing at the time.

This reasoning, of course, has no application in a case like the one at bar where the corporation was in existence when the constitution of 1890 was adopted, and continued in existence thereafter, and until now "retaining the precise corporate existence it originally had."

In *Wirt Adams, State Rev. Agent, vs. Tombigbee Mills,* 29 Southern Reporter, decided Feb. 18, 1901, the Mississippi Supreme Court itself says:

"This appellant never lost its exemption by consolidating with any other corporation. It has always retained 'the precise corporate existence' it originally had. *Its exemption was therefore continued by Section 181 of the constitution of 1890,* subject to legislative repeal."

However, even if it were necessary to come in conflict on this point with the Supreme Court of Mississippi, we should still insist that the view which we have submitted is the correct one, and should invoke the settled principle that in a case like this, this court will determine these questions upon its own judgment of the law.

5.—The Impairment of the Exemption by Subsequent Legislation.

In the discussion of this title, there are several theories to be considered, which flow from the preceding matter.

1. If we are correct in the proposition that the exemption found its origin in the act of 1854, and that the act of 1882 was merely a modification of it, admissible under the constitution of 1869 (even as recently construed by the Supreme Court of Mississippi) as argued herein, *ante* pp. 22-26,—then it is immaterial if the Supreme Court of Mississippi be correct in holding that the act of 1886, and the Code of 1892, either of them, assumed to *repeal* the exemption. Such repeal was beyond the power of the legislature.

2. Again: If we are correct in the proposition that both the *Mississippi Mills* case and the *Adams* case missed the true meaning of the constitution of 1869, and that that constitution did not prohibit the granting to a railroad thereafter to be constructed even an irrepealable exemption from taxation, as argued herein, *ante* p. 26, then also is it immaterial if the Supreme Court of Mississippi correctly construed the act of 1886 and the Code of 1892; and for the same reason.

3. Again: If we are correct in the proposition that the constitution of 1869 contained at least no prohibition against the granting of a perpetual exemption from *privilege* taxes, as argued herein, *ante* p. 52; then, so far as the privilege taxes involved are concerned it is still immaterial if the Supreme Court correctly construed the act of 1886 and the Code of 1892, and

for the same reason—though it is material so far as the property taxes are concerned.

4. If, however, this court should determine, either (a) that the construction given to the constitution of 1869 in the *Mississippi Mills* case is correct; or (b) that the rights of plaintiff in error must be determined on the principle of that case, because it was the construction of the constitution settled by the Supreme Court at the time when the railroad company acted, or (c) that the effect of Sec. 181 of the constitution of 1890 was to ratify the grant of exemption made in 1882 even if unconstitutional at the first—then in any of those events, the question arises: Has the exemption been repealed, as the Supreme Court of Mississippi held that it has been?

We maintain that it has not; that in none of the acts passed since 1882 has the legislature intended to revoke this grant.

It is useless to discuss the true meaning of the Code of 1880, since it was enacted two years before this grant was made.

The act of 1884 certainly is no repeal (See Laws 1884, page 29; Appendix, pages 25 and 26). That statute was but an amendment of sections 607 and 608 of the Code of 1880. All discussion as to the intendment is cut off by its own express provision, when, after fixing the privilege tax which might be paid by the various railroads named, it declares this:

> "All the railroads not named herein, *and not exempt from taxation by their charters,* $60.00 per mile."

The Supreme Court of Mississippi, in the case of *Adams vs. Railroad Company,* 77 Mississippi, in its opinion treating this subject of repeal, on pages 290-292, does not even claim that the act of 1884 operated as a repeal.

Section 6 of Chapter 1 of the acts of 1886 (Laws 1886, page 23; Appendix, page 27), is claimed as a repealing act; and, as applied to the Natchez, Jackson & Columbus Railroad, was so treated by the Supreme Court of Mississippi in the *Adams* case. We should challenge, if it were necessary, the correctness

of the analysis of that statute made by the Supreme Court of Mississippi as applied to any railroad, claiming that it was not the intention of the legislature thereby to *impose* taxes on any railroad whatever; but certainly it can not be so applied to the Gulf & Ship Island Railroad. The section runs as follows:

> "SEC. 6.—*Be it further enacted,* That the act entitled 'An Act to amend Sections 607 and 608 of the Code of 1880, in relation to privilege taxes on railroads, approved March 13, 1884, be so amended as to fix the amount of privilege tax to be paid by the several railroad companies mentioned and referred to in said act at sums twenty-five *per centum* greater respectively than the sums mentioned in said act; and hereafter said railroad companies shall pay privilege taxes respectively twenty-five *per centum* greater per mile than as fixed in said act."

But one construction can be placed on this statute, *i. e.* that it increased by twenty-five per cent. the rate of taxation on all roads which were taxable under the act of 1884. It did not seek to subject any property which had been theretofore exempt, and its operation was expressly confined to the "several railroad companies mentioned and referred to in said act"; (*i. e.*, the act of 1884) manifestly meaning those that were referred to for purposes of taxation, and having no relation whatever to those that were excused because of their charter exemptions.

The act of 1888, page 29, cited by Judge Whitfield in his opinion on the *Adams* case, 77 Miss., page 289, certainly imposed no tax on anything. It runs in this wise:

> "SEC. 1.—*Be it enacted by the Legislature of the State of Mississippi,* That every railroad which has failed to pay the taxes for which the same was liable for any year for which it was so liable, *such railroad not being exempt by law or its charter from taxation for such year and so being liable to taxation,* shall be assessed for, and shall pay, an *ad valorem* tax, to be assessed as hereinafter provided, unless," etc.

This statute, therefore, was nothing but a statute providing

for the collection of delinquent taxes; and extending to the delinquents the privilege of paying a commuted privilege tax instead of submitting to *ad valorem* taxation.

The act of 1890 (Laws 1890, page 12; Appendix, page 30), did not impose taxes on railroads theretofore exempt. Such result was expressly negatived by its proviso, which is as follows:

> "Provided no railroad shall be subject to taxation while exempt by its charter, nor while the same is in process of construction, or within one year after completion, but such exemption shall not be for more than three years from the date the first rails are laid, and if any part thereof shall be finished and used for profit after such time, the same so used shall be taxed:" etc.

This statute is a little awkwardly written; but the limitation of the exemption to three years from the date the rails are first laid, is manifestly not a limitation of the exemption contained in any *charter,* but is a limitation of the new exemption which is granted by the act itself to railroads not theretofore exempt; for the act grants an exemption to all railroads in process of construction, whether they were theretofore exempted or not.

The court will observe that the Supreme Court of Mississippi in its opinion (77 Miss. 291) does not even claim that the act of 1890 repealed any exemption theretofore existing; it only claims that it was a *fiasco,* and did not continue the exemption of the Natchez, Jackson & Columbus Railroad, because there was at that time none such to be continued.

The Supreme Court also claimed that Sections 3379, 3875, and 3744 of the Code of 1892 subjected all railroads in the state to taxation, regardless of any exemptions contained in their charters.

The opinion of the Supreme Court, however, wholly omits to consider Section 8 of the same Revised Code, which is as follows:

> "8. *Private and local laws not affected, unless,* etc.—Private and local laws not revised and brought into this Anno-

tated Code are not affected by its adoption, unless it be expressly so provided herein."

Thus, the very Code which by certain *general* provisions is considered to have repealed the exemption granted in a railroad charter, is by the Code itself declared to have no application to such law, "unless it be expressly so provided herein."

There is no such provision of an express character in the code.

If there is any repeal, it is by the most general terms; in other words, by implication. Such repeals are not favored; and *generalia specialibus non derogant.*

The several sections of the Code of 1892 are to be considered together; and thus considered, it seems clear that a railroad company expressly and specially exempted from taxation, is not subject to those provisions which apply only to those otherwise liable to be taxed; for the provisions of the Code are designed solely to effect the assessment of what is liable to be taxed, so as to collect the taxes.

It is true that Section 3744 reads as follows:

"The following property, and no other, shall be exempt from taxation, to-wit:"

Also, that amongst the properties in that section enumerated as being exempt, are not mentioned railroad properties. But (without reference to the express provision of Section 8 of the Code, cited above), it is manifest, and such is the only reasonable construction of the section, that what was thereby intended was to provide for the granting of exemptions by force of the section itself in the case of properties not otherwise exempt; and to grant such exemption, in regard to the classes of property therein mentioned, and to the extent mentioned, to any and all persons owning the same in the state, and without any reference to special conditions or special contracts.

It was a paragraph *conferring* exemptions in general, and not a paragraph intended to repeal existing special exemptions. The expression "and no other" therein used, is a limitation upon the

grant of exemptions therein made, and intended to exclude the *inference* of any grant of exemptions by the argument based on similarity in kind. Especially is this view of the statute reinforced by holding in mind the clear declaration of paragraph 8.

Moreover, in the very same chapter on Revenue, in the Code, we find Sections 3875 and 3877 (the latter section not being adverted to by the Supreme Court of Mississippi in its opinion).

Section 3875 (See Appendix, page 32), so far as material, runs as follows:

> "Each railroad company owning and operating a railroad shall, on or before the first Monday of April in each year, file with the Railroad Commission, a complete schedule, under oath, of all its property, real or personal, taxable and non-taxable, setting forth therein," etc.....
> "And if any of said property is claimed to be exempt from taxation, it shall be expressly stated and the law cited under which the claim is made."

Section 3877 (See Appendix, page 33), so far as material, is as follows:

> "The members of the Railroad Commission are constituted said railroad assessors, and they shall, upon the receipt or making and completion of the schedules provided for in the last two sections, assess all railroads, telegraph, sleeping car, and express companies *property, liable to taxation in the state,* affixing its true value, so that said property shall bear its just proportion of taxation," etc.

Here, then, is a clear recognition of the fact that the Code is not intended to repeal exemptions, but that the Railroad Commission are to abstain from assessing exempt railroad property for taxation.

Section 3875 provides that the schedule filed as the basis for the assessment, shall be a schedule of all the property "taxable and non-taxable."

The Supreme Court of Mississippi says of this (77 Miss. 292), that "The word 'non-taxable' in this connection, does not mean

exempt property, but property like government bonds that are not taxable at all." We submit that this is a very far-fetched and untenable assumption. As the Supreme Court itself insists, under and by virtue of Section 3744, there is no "non-taxable" property to exist in the state, except such as is enumerated as non-taxable by that section. Of such property, then, what is it to be supposed that a railroad company shall own? Is it a cemetery? Is it any property belonging to the United States? Is it wearing apparel? Is it a gun—or poultry?

On the other hand, if there is to be no non-taxable property under the law of the state, except such as is enumerated in Section 3744 (all which clearly is not property of such nature as that the legislature would speculate on the ownership of it by a railroad company), then we are forced to the position that the property must be "non-taxable," either because of its being connected in some way with the fiscal system of the United States government and exempt under the federal law, or it must be "non-taxable" because of the provisions contained in the railroad charters.

Is it reasonable to suppose that in blocking out the fiscal system of the state of Mississippi, the legislature undertook to speculate about the ownership by railroads of the very unlikely property of "government bonds," or of any other fiscal agency of the federal government? If such possibility should occur to the mind of a legislator, and the legislature were careful to make such reservation in Section 3875, why did they not also make a similar reservation in Section 3744? There is no provision in Section 3744 that government bonds shall be exempt from taxation, or that greenbacks should be; why the difference?

It is perfectly manifest that the legislature did not undertake in either section to deal with this subject-matter; and, therefore, we are forced to the conclusion that the expression used in the statute of "taxable and non-taxable," did not mean what the Supreme Court of Mississippi held it to mean, but did mean the

exempt railroad property, exempted under their respective charters.

The Supreme Court of Mississippi, in this connection, said that the word "non-taxable" did not mean exempt property, but property like government bonds that are not taxable at all, and then stated that "This is made plain by the provision at the close of the section that 'if the said property is claimed to be exempt from taxation, it shall be separately stated, and the law cited under which the claim is made.'"

We submit that the precise reverse is correct. Such a proposition is not made plain by the closing provision. How the court could deduce such a conclusion, is inexplicable to us. The closing paragraph seems to make plain precisely the contrary idea. It is perfectly manifest that the closing provision was intended to refer to and effectuate the previous provision in the same paragraph in regard to "non-taxable" property. The bare fact that the legislature used the word "non-taxable" in one case, and "exempt," in the other, affords no basis for a discrimination in legal effect; because, used in this connection, the two words are synonymous.

The foregoing view is re-enforced by the fact that in Section 3877 (not noticed by the Mississippi Supreme Court) the express provision is that the Railroad Commission shall assess all railroad, telegraph, sleeping car, and express property "liable to taxation in the state."

Here is a manifest additional recognition of the fact that there is to be found in the state railroad property "not liable to taxation."

Sec. 3379, relied on, is nothing but a paragraph in the privilege tax law. That law was general in its nature. The legislative mind was not directed to any special railroad, so far as any evidence to be found in the statute is concerned. The classification for privilege taxation was manifestly intended to apply

to such as were subject to taxation, but there is no evidence (especially considering Section 8) that it was intended thereby to subject any company by contract exempted, or to recede from any enactments or plighted faith by which the state was bound.

The smallness of the privilege tax imposed, on which the Supreme Court of Mississippi lays stress, is easily accounted for; the Code of 1892 for the first time imposed a privilege tax on railroads subject to taxation, as a cumulative tax. Prior to that time, whenever a railroad liable to taxation paid a privilege tax at all, it was a mere commuted tax in lieu of an *ad valorem* tax. Naturally, when railroads already liable to taxation on their property, were subjected to an additional tax on their business, it was made small comparatively.

On the second appeal of the *Adams* case, the Mississippi Supreme Court considered the effect of Section 8 of the Code of 1880 (not that of 1892), as applied to the alleged operation of that Code on the exemption of the Natchez, Jackson & Columbus Railroad Company (77 Miss., p. 317). The discussion arose incidentally out of the observations made by the court in its previous opinion (77 Miss. 290). The court then maintained that Section 8 of the Code of 1880 did not prevent that Code from repealing the exemption of the Natchez, Jackson & Columbus Railroad, because that railroad was expressly named in Section 608 of the Code of 1880. But this court will observe that if there was any force in that position, the same is utterly without force in the case at bar, because the Code of 1892 does not anywhere name the Gulf & Ship Island Railroad, or any other railroad which claimed a charter exemption, in any way as being liable to a tax.

The argument of the court below, on page 317, is a boomerang so far as it affects this case.

Moreover, Section 8 in the Code of 1892 is even more emphatic in its declaration than Section 8 of the Code of 1880, be-

cause the word "expressly" is inserted into the section as it appears in the Code of 1892.

It can not be properly said that on this writ of error it is not open to us to question the soundness of the holding that the grant of exemption, if originally made in 1882 and if repealable under the view announced in *Mississippi Mills vs. Cook,* was repealed by subsequent legislation.

To put it differently: It can not be said that we are shut in to the proposition that the grant of exemption was irrepealable and that the legislature of Mississippi by statute subsequently enacted had undertaken to repeal it; or otherwise, that this court is without jurisdiction for want of the subsequent legislation.

We maintain that even if the statute was repealable by the legislature, and even if the legislature has never undertaken to repeal it; yet still if the courts, in the construction and application of the general revenue laws of the state, those revenue laws being themselves subsequently enacted, have thereby deprived the company of its exemption—the case comes within the jurisdiction of this court under the contract clause of the constitution of the United States.

In *The Bridge Proprietors vs. Hoboken, etc., Co.,* 1 Wallace, 116, this Court said:

> "It is said, however, that it is not the validity of the act of 1860 which is complained of by plaintiffs, but the construction placed upon that act by the state court. If this construction is one which violates the plaintiffs' contract and is the one on which the defendants are acting, it is clear that the plaintiffs have no relief except in this court, and that this court will not be discharging its duty to see that no state legislature shall pass a law impairing the obligation of a contract, unless it takes jurisdiction of such cases."

In *New Jersey vs. Wright*, 117 U. S. 648, this court said:

> "The question, then, will be whether the long acquiescence of the land owners, under the imposition of taxes, raises a presumption that the exemption which once existed has been surrendered.
>
> "This question, by itself, would be a mere question of state municipal law, and would not involve any appeal to the constitution or laws of the United States. But where it is charged that the obligation of a contract has been impaired by a state law, as in this case by the general tax law of New Jersey as administered by the state authorities, and the state courts justify such impairment by the application of some general rule of law to the facts of the case, it is our duty to inquire whether the justification is well grounded. If it is not, the party is entitled to the benefit of the constitutional protection."

See also *McCullough vs. Virginia*, 172 U. S. 102, 116.

This Court also, in *I. C. R. R. Co. vs. Wirt Adams, State Revenue Agent*, 180 U. S. 28, held that a case arising under the contract clause of the United States constitution was raised by a bill which set forth precisely the same case with that at bar; in which it was expressly charged that the case of *Mississippi Mills vs. Cook*, was relied on in the acceptance of the company's charter and the construction of its railroad, and in which it was not denied that the legislature had the power to repeal the statute if it saw proper so to do—which features of the bill are fully and clearly set forth in the opinion of the court.

Even if it be true that plaintiffs in error contracted for an exemption defeasible by the legislature, under the rule announced in the *Mississippi Mills* case, it still is true that by the contract it was to be deprived of that exemption by the action of the legislative department only, and not by mistaken action of the courts in subverting established principles and applying subsequently enacted general laws not intended by the legislature to apply to the case.

In the following cases the court determined for itself whether or not there was still an existing contract, or whether the rights acquired thereunder had been waived, or had been lost or surrendered by consolidation, or otherwise: *Morgan vs. Louisiana,* 93 U. S. 217, 219; *Railroad Co. vs. County of Hamblen,* 102 U. S. 273, 275; *Wilson vs. Gaines,* 103 U. S. 417; *Louisville & Nashville R. R. Co. vs. Palmes,* 109 U. S. 244, 256; *Memphis Railroad Co. vs. Commissioners,* 112 U. S. 609, 617; *St. Louis, Etc., Railway Co. vs. Berry,* 113 U. S. 465, 472; *Chesapeake & Ohio Railway Co. vs. Miller,* 114 U. S. 176; *Given vs. Wright,* 117 U. S. 648, 655; *Keokuk & Western Railroad vs. Missouri,* 152 U. S. 301, 305; *Mobile & Ohio Railroad vs. Tennessee,* 153 U. S. 486, 492; *St. L. & San Francisco Railway vs. Gill,* 156 U. S. 649, 656; *Norfolk & Western Railroad vs. Pendleton,* 156 U. S. 667, 673; *Mercantile Bank vs. Tennessee,* 161 U. S. 161, 171; *Stearns vs. Minnesota,* decided Dec. 3, 1900.

Conclusion.

We, therefore, submit that considering this cause from various points of view, as the court will observe we have not confined ourselves to a single line of argument, this case should be reversed.

Respectfully submitted,

EATON J. BOWERS,
EDWARD MAYES,
For Plaintiffs in Error.

APPENDIX.

A

Charter History and Statutes Relating to Gulf & Ship Island Railroad Company.

Laws of Mississippi, 1850, page 324.

An Act to incorporate the Gulf & Ship Island Railroad Company.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That Wm. B. Hawthorne, Archibald Clarke, Jacob Elmer, Joseph R. Plummer, Lyman Randall, Alfred E. Lewis, William Griffin, P. J. Myers, Griffin H. Holliman, Joel E. Wilburn, and John West, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by the name of the Gulf & Ship Island Railroad Company, and by that name to sue and be sued, plead and be impleaded, in any court of this State; to make and have a common seal, and the same to break, alter or amend, at pleasure; and the company is hereby vested with all powers, privileges and immunities, which are or may be necessary to carry into effect the purposes and objects of this Act, hereinafter set forth; and said company is hereby authorized and empowered to locate, construct and finally complete, a single, double or treble railroad or way from some suitable point upon the coast of the Gulf of Mexico, as near Ship Island as may be, in a northern direction, as near as may be to intersect the Southern Railroad, at any point which

they may deem most suitable between Brandon and Quitman in Clarke County, and to transport, take and carry property and persons upon said railroad or way, by the power and force of steam, of animals or of any other mechanical or other power, or any combination of them, which the said company may choose to apply; and for the purpose of constructing said railroad or way, the said company is hereby authorized to lay out their road, not exceeding two hundred feet wide, through the whole length; and for the purpose of depots, cuttings and embankments, and for the purpose of necessary turnouts, and for obtaining stone, gravel, timber, and other materials which may be necessary, may take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the business of said company, and also to make joint stock with any other railroad corporation: *Provided,* that all damages that may be occasioned to any person or corporation, by taking of any such land or materials aforesaid, for the purpose aforesaid, shall be paid for by said company, in manner hereinafter provided.

(Here follow Sections 2 to 15 inclusive, not material to this case and hence omitted.)

This charter was approved March 5th, 1850.

Laws of Mississippi, 1854, page 168.

An Act entitled an Act to amend an Act to incorporate the Gulf and Ship Island Railroad Company, approved March 5, 1850.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That hereafter J. F. Foute, Samuel Freelander, Wm. A. Ware, C. F. Hemingway, John B. Toulme, Pierre Saucier, Jacob Elmer, Wm. Griffin, Donald McBean, W. B. Hawthorne, C. McLaurin, Ebenezer Ford, and John G. Robinson and

their associates be and they are hereby incorporated into a body politic and corporate under the name and style of the Gulf and Ship Island Railroad Company, and by that name are hereby authorized to have and to hold such real and personal property as may be necessary for the objects of this corporation, to make contracts, sue and be sued, and to have a common seal; and for the management, direction and control of said Company, to make such rules, regulations, by-laws and ordinances as a majority of the stockholders, in value, shall direct from time to time.

SEC. 2. *Be it further enacted,* That the corporators aforesaid, together with their associates and successors, shall have full power to organize such form of government and appoint such officers for the administration of the affairs and interests of the Company, as a majority of the stockholders, in value, shall from time to time direct and establish. And said Company so organized, authorized and empowered, and shall have the right to construct, have and maintain a railroad of one or more tracks as they may deem necessary, together with engine and car houses, work shops, depots and fixtures, bridges, boats, engines and operative requirements of all kinds; which said road extended from a point to be selected by said Company on the shore of the Gulf of Mexico between the Pass Christian and the Bay of Biloxi in the County of Harrison, and from thence extending in a northerly direction to the city of Jackson, or the town of Brandon, or Canton, as shall be deemed the most advantageous to said Company.

SEC. 3. (Not material, hence omitted.)

SEC. 4. *Be it further enacted,* That there is hereby granted to the said Gulf & Ship Island Railroad Company for the tract of said road, a fee simple title of any lands now owned by this State on the route upon which the line of said road may be established, in the continuous width of two hundred feet with full power to take and use timber, stone and earth from other lands adjacent now owned by the State, to construct and keep in repair said road.

(Sections 5 to 10, inclusive, not material, hence omitted.)

SEC. 11. *Be it further enacted,* That the property and investments of the Company connected with this enterprise, within

this State, shall not be subject to taxation until the road shall be in full operation and completed.

SEC. 12. *Be it further enacted,* That the act to which this is an amendment shall be and is hereby repealed as far as the same is inconsistent with the provisions of this act, and that this act be in force and take effect from and after its passage.

Approved, March 1st, 1854.

Laws of Mississippi, 1860, page 189.

A Memorial of the Legislature of the State of Mississippi to the Congress of the United States, praying the cession of certain public lands to aid in the construction of the Gulf & Ship Island Railroad.

WHEREAS, The building of the Gulf & Ship Island Railroad is an enterprise of great importance to the interest and prosperity of the State of Mississippi, and important to the agricultural and commercial development of the western States and northwestern territory—connecting, as it will, with lines of railroad that run through the most fertile and productive lands in the world, and desiring to build up at its terminus a commercial city on the seaboard, which will have the advantage of one of the best harbors on the gulf or on the Atlantic coast; and

WHEREAS, The federal government is interested in having the means for a speedy transit, in time of war, to this otherwise almost defenseless coast; and

WHEREAS, The lands in the southern portion of Mississippi, through which this road is designed to run, are valueless without the success of this enterprise being available for lumber or the production of turpentine alone, which, to be profitable, must have cheap and speedy transportation; therefore

Resolved by the Legislature of the State of Mississippi, That our Senators in Congress be instructed, and our Representatives

required to use their best exertions to procure the passage of an act by the Congress of the United States, donating, in addition to whatever has already been granted, five hundred thousand acres of land, to be held in trust by the State of Mississippi for the completion of said Gulf & Ship Island Railroad; or for so much land in addition to the present grant, as Congress in its wisdom may be willing to donate.

Resolved, That should Congress refuse to make an additional grant of lands for said work, that our Senators be instructed, and our Representatives required to procure for the State of Mississippi, if possible, the privilege of entering at the minimum price, all the public lands lying within — miles on both sides of the air line connecting its southern with its northern terminus.

Resolved further, That the Governor be instructed to furnish our Senators and Representative, each, with a copy of the foregoing memorial and resolutions.

Approved Feby. 10, 1860.

Laws of Mississippi, 1861, page 36.

An Act to suspend the collection of the Gulf & Ship Island Railroad tax, and for other purposes.

Section 1. *Be it enacted by the Legislature of the State of Mississippi,* That "An Act to authorize the Board of Police of Rankin County to subscribe for stock in the Gulf & Ship Island Railroad Company," and, "An Act to authorize the Board of Police of Madison County to subscribe for stock in the Gulf & Ship Island Railroad Company," both of which acts approved Nov. 30, 1860, be, and the same are hereby suspended until one year at least after peace shall be restored in the Confederate States of America and the United States; but this suspension shall in no way impair or destroy any of the rights or privileges of said Company in these taxes or any other matter.

SEC. 2. *Be it further enacted,* That said Company is hereby authorized to suspend all action until one year at least after such peace shall be restored without impairing or destroying any right or privilege now belonging to said Company.

SEC. 3. *Be it further enacted,* That all laws or parts of laws contrary to the provisions of this act, be, and the same are hereby repealed.

SEC. 4. *Be it further enacted,* That this act shall take effect and be in force from and after its passage.

Approved Aug. 2nd, 1861.

Laws of Mississippi, 1866, page 18.

An Act to authorize the Governor of the State to appoint an agent to secure a re-grant of lands from the Congress of the United States to the Gulf & Ship Island Railroad.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That the Governor of the State is hereby authorized to appoint an agent to secure a re-grant of lands from the Congress of the United States of America to the Gulf & Ship Island Railroad.

SEC. 2. *Be it further enacted,* That the sum of five hundred dollars be, and the same is hereby appropriated out of any money in the State Treasury to pay the expenses of the agent to be appointed under the first section of this act.

SEC. 3. *Be it further enacted,* That this act take effect and be in force from its passage.

Approved October 30th, 1866.

Laws of Mississippi, 1872, page 155.

A Memorial to Congress for the request of lands to aid the construction of the Gulf & Ship Island Railroad.

WHEREAS, The United States did, on August the 6th, 1856, grant to several railroads, alternate sections of land lying on the contemplated route for the purpose of aiding their construction; one of the roads thus sought to be benefitted, was the Gulf & Ship Island Road, chartered by the Legislature; the proposed route of this road begins at Mississippi City, and terminates at Canton, in this State; the grant of land was complied with, on condition that the road should be completed within ten years; under this condition, the land so granted lapsed to the United States, owing to the intervention of war between the States; the company was unable to complete the road, and thus lost the aid contemplated by Congress; the construction of the road would have led to the development of the harbor of Ship Island, which is one of the best on the line of the seacoast, south of Norfolk, Virginia. This harbor was occupied by the British fleet during the war of 1812, and was held by the federal navy during the late war; the value of this harbor is well known to every one connected with the maritime department of the United States; this road would pass through a country abounding in the finest pine forests, and capable of sustaining a dense population; without this road, the region of counties (country) through which it would pass, must remain comparatively a dense wilderness for generations to come; with this road constructed and in operation, this country now so isolated would fill up with a large population, its unsurpassed wealth of timber would become available to the ever increasing demand of lumber, and its agricultural products would find an easy transit to the commercial marts of the world; therefore

Be it resolved by the Legislature of the State of Mississippi, That our Senators and Representatives in Congress be requested to urge the passage of an act reviving the grant of land made to the Gulf & Ship Island Railroad in the year 1856.

Be it further resolved, That the Governor is requested to forward a copy of this memorial to each of our Senators and Representatives in Congress.

Approved, Dec. 4, 1872.

Laws of Mississippi, 1882, page 849.

An Act to incorporate the Gulf & Ship Island Railroad Company.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That Wirt Adams, S. Gwinn, R. A. Dabney, E. Barkesdale, J. S. Hamilton, T. Jones Stewart, A. Hoskins, Geo. C. McKee, J. J. Thornton, T. J. Montross, together with those who may hereafter become associated with them, their successors and assigns, be, and they are hereby created a body corporate and politic, by the name and style of The Gulf & Ship Island Railroad Company, and as such shall have perpetual succession, and by that style, title and name, sue and be sued, plead, and be impleaded in law or equity, and purchase, receive, hold and convey real and personal estate, and the same retain to themselves, their successors, and assigns, so far as it shall be necessary for their accommodation and convenience in the transaction of their business, and such as may in good faith be conveyed to them by way of security, or in satisfaction of debts, or by donation, and it shall be lawful for the directors of said company to receive in payment of subscription to the capital stock of said corporation, under such regulations and restrictions as may be prescribed by them, any real or personal property that may be offered by persons wishing to subscribe to the capital stock of said Company; and they shall have the right to sell, convey and dispose of said real or personal property at any such time and on such terms as may best subserve the purposes of building and maintaining said road and harbor contemplated by this instrument.

SEC. 2. *Be it further enacted,* That said Company is hereby authorized to locate, construct, manage, control, maintain, equip, own, use and operate its railroad at such point as may be determined by said Company, from a point on the shore of Mississippi Sound in this State, and in a northerly direction to a point at or near Jackson, Hinds County, Mississippi, or other point on the Chicago, St. Louis & New Orleans Railroad, and to receive and transport persons and property upon said road, as hereinafter provided; and for the purpose of constructing said railroad, said Company is hereby authorized and empowered to lay out their

roadway not exceeding two hundred feet wide, and not less than fifty feet distant on each side from the center of the track, and the said Company shall receive and transport the cars of any other railroad with which it may connect, upon such terms as may be agreed upon between said railroad companies.

SECS. 3 and 4 not material and hence omitted.

SEC. 5. *Be it further enacted,* That said Company be and is hereby invested with all the rights, powers, privileges and authority necessary for the location, construction, management, control, building, equipping and operating a railroad, as prescribed in Section 2nd of this Act, with all such appurtenances and appendages as may be necessary or expedient, including all depots for the reception and accommodation of passengers, and all warehouses, water stations, machine shops, or car houses and other necessary buildings, of whatever description; they shall have power to make contracts with any person or persons on behalf of said Company for constructing or repairing said railroad and superstructure, or any part thereof; and performing any work respecting the same, which they may deem necessary or proper; to require from the stockholders from time to time payment of their stock subscriptions in such manner as they may direct, until the whole shall be paid, and to adopt such rules and by-laws for the government of said Company as they may deem necessary not inconsistent with the laws of this State, or he United States.

SECS. 6 to 17 inclusive are not material and are therefore omitted.

SEC. 18. *Be it further enacted,* That in order to encourage the investment of capital in the works which said Company is hereby authorized to construct and maintain, and to make certain in advance of such investment, and as an inducement and consideration therefor, the taxes and burdens which this State will and will not impose thereon, it is hereby declared that said Company, its stock, its railroad, and appurtenances, and all its property in this State necessary or incident to the full exercise of all the powers herein granted shall be exempt from taxation for a term of twenty years from the passage of this Act.

* * * * * * *

SEC. 19 not material.

SEC. 20. *Be it further enacted,* That all acts or parts of acts

in conflict with this act be, and the same are hereby repealed, so far as this Company hereby incorporated, is or may be affected thereby, and that this act take effect and be in force from and after its passage.

Approved February 23, 1882.

Laws of Mississippi, 1882, page 131.

A Memorial to the Congress of the United States in reference to waiver of forfeiture of the grant in aid of the Gulf and Ship Island Railroad.

To the Senate and House of Representatives of the Congress of the United States in Congress assembled:

Your memorialists would respectfully show to your honorable body, that the State of Mississippi has made repeated but ineffectual efforts heretofore through its Legislature, in the form of Resolutions and Memorials to Congress, to obtain a revival of the grant of public lands made by the Government in 1856, to aid in the construction of the Gulf & Ship Island Railroad. That this liberal and valuable donation was lost by no supineness or indifference of our people, but by the interruption of all works of internal improvement caused by the late war, and since its close, to the prostration and poverty which it entailed. No enterprise in our State has ever received more repeated and cordial endorsement from our Legislature and people than this. At its present session our Legislature has granted a new act of incorporation with liberal provisions, thus again attesting the abiding and earnest interest felt by our people in this important work.

It is almost superfluous to dwell on the great benefits to our State which would result from the construction of this road. It would gratify a long cherished aspiration of all Mississippians to have, within our own borders, a seaport town through which

the export and import trade of the State could be conducted. It would speedily populate and develop the resources of the large section of our State hitherto isolated and neglected for want of facility of access; a section of immense resources in its magnificent pine forests, its bold, perennial streams, which afford unlimited water power, and its genial salubrious climate, making it the appropriate seat of cotton and woolen manufacture on a large scale. There is no portion of our State so well adapted to sheep husbandry, stock raising and farming on a small scale. We are persuaded that its natural advantages would speedily attract a hardy and thrifty population from the West and North, and that the development of its great natural resources would add largely to the wealth of our State and its annual revenues. So long as 1860, Prof. Eugene W. Hilgard, of the University of Mississippi (distinguished throughout the country for his valuable contribution in science), says: "The most casual observer, as soon as personal inspection shall have made him conscious of the reality, cannot fail to be impressed with the immense importance of opening a highway through which Mississippi may communicate over her own, with a portion of her territory which possesses both a harbor commensurate with the magnitude of her commercial interests, and a climate, not only healthful and pleasant, but capable, moreover, of producing many of the choicest fruits of the tropics, as well as the temperate zone. Along with the cotton bales of north and central Mississippi, the lumber and turpentine of the vast pine forests of the State, would find their way with this channel to the great highway of nations. Nor would the ample grazing grounds which separate these forests from the coast, long remain without a land mark to guide the traveler. May the day not be far distant when one uninterrupted band of iron shall link together wheat and cotton fields of the South and West with the live oaks and orange groves of the coast of Mississippi."

It is not our State and its people alone who would reap advantages from the construction of such a road. The work would possess a semi-national importance in affording to the grain growers of the West and the Northwest the shortest and cheapest line of transportation to the Seaboard, for the export of their large annual surplus of products; while at the same time it

would enable them to receive their supplies of sugar, coffee, and other tropical products, as well as foreign merchandise, at a great reduction in the costs of transportation. The Legislature of Mississippi has just granted a charter to the Yazoo Valley & Mississippi River Railroad, to extend from Jackson, via Yazoo City, to Arkansas City in the State of Arkansas. This franchise was obtained by the Chicago, St. Louis & New Orleans Railroad Company, which, with ample capital, proposes building this line without delay. The addition of the remaining link from Jackson to Pascagoula, or other point on our seaboard, opposite Ship Island Harbor, will then connect the grain fields of the West and Northwest by almost an air line of railway with the shipping of the world at that port.

We must consider the most important practical question of the resources available for the work. It is manifest the road cannot be built by corporate or individual subscriptions in our own State. The well known pecuniary condition of our people forbids such a hope. But we have good reason to believe that if the former grant of government lands can be revived, a substantial basis of credit will be created; and with this material aid assured, there will be no difficulty in enlisting Northern and foreign capital to insure the early completion and equipment of the road.

It is apparent that this revival of the government land grant or waiver of forfeiture on the terms and conditions of the original grant becomes the all important and indispensable condition of success in the undertaking. Hence, we make this direct appeal to Senators and Representatives in Congress and earnestly request that they will, without delay, revive and extend the grant of 1856, at the present session of Congress, and as in duty bound, your memorialists will ever pray, etc.

Resolutions of the Mississippi Legislature Accompanying the Memorial to Congress in Reference to the "Gulf & Ship Island Railroad."

Resolved by the Legislature of the State of Mississippi, That our Senators and Representatives in Congress be requested to present to their respective Houses of the National Legislature in Congress assembled, the foregoing memorial, and to urge upon their Houses suitable Bills to secure the waiver of the forfeiture, and extension of time asked in the foregoing memorial.

Resolved, further, That His Excellency, the Governor, be requested to forward copies of the foregoing memorial and resolution to our Senators and Representatives in Congress.

Adopted by the House of Representatives, March 8, 1882.

W. H. H. TISON,
Speaker of the House of Representatives.

Adopted by the Senate, March 7, 1882.

R. O. REYNOLDS,
President of the Senate.

ROBERT LOWRY,
Governor.

Approved March 9th, 1882.

Acts 1884, page 971.

An Act to facilitate the construction of the Gulf & Ship Island Railroad, and for other purposes.

WHEREAS, The penitentiary and convicts have been leased to Hamilton, Allen & Co., and their assigns, for a term of years beginning on the 1st day of January, 1881, and ending on the 1st day of January, 1887, and the placing of convicts on farms,

and sub-contractors, is not satisfactory in its results and is not approved by the people; and

WHEREAS, The Gulf & Ship Island Railroad, as projected, is an enterprise in which the whole State is interested, as the building of said road would do much towards developing a large section of the State, thereby greatly increasing its revenues and bring into practical utility the splendid harbor at Ship Island, thereby giving the State a seaport for foreign as well as domestic commerce; therefore

SECTIONS 1 to 6 inclusive are not material and are therefore omitted.

SEC. 7. *Be it further enacted,* That the charter of the Gulf & Ship Island Railroad Company be so amended as to extend the construction of the line of said railroad beyond the present limit authorized by the charter of said company; and for that purpose may issue additional bonds and stock of said company, but in no event shall bonds be issued by said company on said road to an amount exceeding twenty thousand dollars per mile; and the Gulf & Ship Island Railroad shall run the line of said railroad from its southern terminus along the line of the old survey of the Gulf & Ship Island Railroad, centrally through the State as far as practicable to the town of Pontotoc, Pontotoc County, Mississippi, thence north of northeast or northwest to the boundary line of the State, or to the Tennessee river, as may be determined by the board of directors of said Company.

SEC. 8. *Be it further enacted,* That said Gulf & Ship Island Railroad Company are hereby subrogated to all the rights and privileges heretofore granted by the State of Mississippi to the Gulf & Ship Island Railroad Company, and shall have the right to use and enjoy such field notes, maps and surveys as have been heretofore made in the interest of said road as were authorized and granted by the State under the acts approved March 2nd, 1854, and December 3rd, 1858.

Approved March 13, 1884.

xv

United States Statutes at Large, 1890; Vol. 26, p. 496; Chap. 1049.

An Act to forfeit certain lands heretofore granted for the purpose of aiding in the construction of railroads, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby forfeited to the United States, and the United States hereby resumes the title thereto, all lands heretofore granted to any State or to any corporation to aid in the construction of a railroad opposite to and co-terminus with the portion of any such railroad not now completed, and in operation, for the construction or benefit of which such lands were granted; and all such lands are declared to be a part of the public domain; *provided,* that this act shall not be construed as forfeiting the right of way or station grounds of any railroad company heretofore granted.

* * * * * * *

SEC. 7. That in all cases where lands included in a grant of land to the State of Mississippi, for the purpose of aiding in the construction of a railroad from Brandon to the Gulf of Mexico, commonly known as the Gulf & Ship Island Railroad, have heretofore been sold by the officers of the United States for cash, or with the allowance or approval of such officers have been entered in good faith under the pre-emption or homestead laws, or upon which there were *bona fide* pre-emption or homestead claims on the first day of January, eighteen hundred and ninety, arising or asserted by actual occupation of the land under color of the laws of the United States, the right and title of the persons holding or claiming any such lands under such sales or entries are hereby confirmed and persons claiming the right to enter as aforesaid may perfect their entry under the law. And on condition that the Gulf & Ship Island Railroad Company within ninety days from the passage of this act shall, by resolution of its board of directors, duly accept the provisions of the same and file with the Secretary of the Interior a valid relinquishment of all said Company's interest, right, title, and claim in and to all such lands as have been sold, entered, or claimed as aforesaid,

then the forfeiture declared in the first section of this act shall not apply to or in anywise affect so much and such parts of said grant of lands to the State of Mississippi as lie south of a line drawn east and west through the point where the Gulf & Ship Island Railroad may cross the New Orleans & Northeastern Railroad in said State, until one year after the passage of this act. And there may be selected and certified to or in behalf of said Company lands in lieu of those hereinbefore required to be surrendered to be taken within the indemnity limits of the original grant nearest to and opposite such part of the line as may be constructed at the date of selection.

Approved September 29th, 1890.

B

References to Some Statutes of Mississippi Prior to 1869, Reserving Power to Tax Corporations.

The Legislature expressly reserved power to impose taxes in the following charters:

1833. Commercial and Railroad Bank of Vicksburg (Laws 1833, p. 129).
1836. Commercial Bank of Rodney (Laws 1836, p. 137).
" Commercial Bank of Manchester (*id.*, p. 142).
" Commercial Bank of Columbus (*id.*, p. 152).
" Tombigbie Railroad Company (*id.*, p. 227).
" Aberdeen and Pontotoc Railroad and Banking Company (*id.*, p. 241).
" Tallahatchie Railroad Company (*id.*, p. 283).

In the following instances the charters provided that the capital stock of the respective corporations should "from time to time, as the Legislature may hereafter direct, be subject to be taxed annually." * * *

1833. Grand Gulf Railroad and Banking Company (Laws 1833, p. 147).
1836. Mississippi and Alabama Railroad Company (Laws 1836, p. 165).
" Lake Washington and Deer Creek Railroad and Banking Company (*id.*, p. 215).

The following acts expressed in varying language the same reservation of power to the Legislature.

1833. Protection Insurance Company (Laws 1833, p. 84).
" West Feliciana Railroad Company (*id.*, p. 153).
1836. Gainsville and Narkeetah Railroad Company (Laws 1836, p. 86).
" Mississippi Springs Railroad Company (*id.*, p. 296).
1850. Yazoo and Houston Railroad Company (Laws 1850, p. 352).
1859. Warren Insurance Company (Laws 1859, p. 122).

1862. Columbus Life and General Insurance Company (Laws 1862, p. 295).

In the following charters the Legislature expressly declared that the property of the respective corporations should be "subject" or "liable" to taxation:

1836. Commercial Bank of Natchez (Laws 1836, p. 252).
1852. Columbus Life and General Insurance Company (Laws 1852, p. 199).
1854. Memphis and Charleston Railroad Company (Laws 1854, p. 86).
1865. Hernando Mutual Insurance Company (Laws 1865, p. 314).
" Pearl River Manufacturing Company (*id.*, p. 381).

The Legislature of 1866-67 (the last session held before the adoption of the Constitution of 1869) in the charter of the Memphis, Holly Springs and Mobile Railroad Company expressly reserved to the State the power to levy income taxes upon the travel on the railroad (Laws 1866-67, p. 637), and reserved the same power in respect to the New Orleans, Mobile and Chattanooga Railroad Company (*id.*, p. 344). In the cases of the Bradford Machinery Company (*id.*, p. 473) and the Hashuqua Manufacturing Company (*id.*, p. 712) provisions were inserted declaring that the property and effects of the companies should remain liable to taxation.

C

Charters Granting Exemptions from Taxation Between 1869 and 1890.

1870. Whitworth Female College, (Laws 1870, pp. 380, 381).
" Macon Male School (Laws 1870, pp. 401, 402).
" Attala County Agricultural and Mechanical Association (Laws 1870, pp, 457, 459).
1873. Educational Society of South Mississippi and East Louisiana (Laws 1873, pp. 429, 433).
" Baldwyn Female College (Laws 1873, p. 435).
" University of Columbus (Laws 1873, pp. 438, 439).
" Plowman and Agricultural Society (Laws 1873, p. 462).
1874. Abbeville Female College (Laws 1874, p. 158).
1877. Manufacturing Companies (Laws 1877, p. 72).
1878. Port Gibson, Utica and Crystal Springs Railroad Company (Laws 1878, pp. 463, 472).
" Brandon Street Railroad Company (Laws 1878, pp. 484, 487).
1880. All railroads while in process of construction (Laws 1880, pp. 19, 86).
" Lea Female College (Laws 1880, pp. 291, 293).
" Meridian and Aberdeen Fair Grounds (Laws 1880, p. 633).
1882. Purchasers of railroads at foreclosure, on incorporation (Laws 1882, pp. 47, 48).
" Delta Land and Manufacturing Company (Laws 1882, pp. 533, 537).
" Mississippi Improvement and Manufacturing Company, etc. (Laws 1882, pp. 545, 550).
" Mississippi Mining, Milling, etc., Company (Laws 1882, pp. 555, 558).
" Star Mining, Milling and Manufacturing Company (Laws 1882, pp. 559, 561).
" Marshall Mills (Laws 1882, pp. 561, 564).

1882. D. Mayer Agricultural and Manufacturing Company (Laws 1882, pp. 564, 565).

" Hope Oil Mill, etc., Company (Laws 1882, pp. 570, 573).

" Warren Cotton Mills Company (Laws 1882, pp. 587, 588).

" Luxapalila Manufacturing and Mining Company (Laws 1882, pp. 588, 591).

" Cooper's Wells Company (Laws 1882, pp. 599, 602).

" Meridian Mills (Laws 1882, pp. 606, 608).

" Blue Mountain Academy (Laws 1882, pp. 667, 668).

" Louisville Male and Female Seminary (Laws 1882, p. 670).

" Palo Alto Academy (Laws 1882, pp. 675, 676).

" Yazoo and Mississippi Valley Railroad Company (Laws 1882, pp. 838, 847).

" Memphis and New Orleans Railroad and Levee Company (Laws 1882, pp. 874, 883).

" Canton, Aberdeen and Nashville Railroad Company (Laws 1882, pp. 1001, 1009).

" Memphis, Selma and Brunswick Railroad Company (Laws 1882, p. 1022).

" Gulf and Ship Island Railroad Company (Laws 1882, pp. 849, 861).

" Birmingham and Northwestern Railroad Company (Laws 1882, pp. 1040, 1049).

" Tennessee and Mississippi Rivers Railroad Company (Laws 1882, pp. 989, 1000).

" Vicksburg and Northeastern Railroad Company (Laws 1882, pp. 1015, 1018).

" Meridian, Brookhaven and Natchez Railroad Company (Laws 1882, pp. 1049, 1064).

" Helena, Sardis, Pontotoc and Birmingham Railroad Company (Laws 1882, pp. 885, 895).

" Mississippi Mexican Gulf Railroad Company (Laws 1882, pp. 961, 974).

" Alabama and Mississippi Railroad Company (Laws 1882, pp. 863, 870).

" Mississippi and Arkansaw Railroad Company (Laws 1882, pp. 933, 942).

1882. Meridian, Winona and Helena Railroad Company (Laws 1882, pp. 943, 959).
" Mississippi, Alabama and Georgia Railway Company (Laws 1882, pp. 975, 988).
" Pass Christian City Railroad Company (Laws 1882, pp. 818, 821).
" City Railroad of Columbus (Laws 1882, pp. 822, 824).
" Georgia Pacific Railway Company (Laws 1882, pp. 824, 826, 834, 837).
1884. Mississippi State Fair Association (Laws 1884, pp. 827 829).
" Sunflower Navigation Company (Laws 1884, pp. 859, 862).
" Hunt and Huddleston College Faculty Association (Laws 1884, pp. 874, 876).
" Lea Female College (Laws 1884, pp. 878, 879).
" Maury Institute (Laws 1884, pp. 880, 881).
" Grenada Collegiate Institute (Laws 1884, pp. 881, 883).
" Caledonia Branch Railroad Company (Laws 1884, pp. 888, 895).
" Warrior Coal Fields Railroad Company (Laws 1884, pp. 895, 901).
" Tombigbee Railroad Company (Laws 1884, pp. 901, 907).
" Moss Point, Scranton and East Pascagoula Railroad Company (Laws 1884, pp. 911, 915).
" Macon and Tuscaloosa Railroad Company (Laws 1884, pp. 915, 916).
" Mississippi River and Deer Creek Railroad Company (Laws 1884, p. 918).
" Memphis, Oxford and Columbus Railway Company (Laws 1884, pp. 919, 920).
" Port Gibson & Alabama Railroad Company (Laws 1884, pp. 922, 934).
" Terry, Brandon and Northeastern Railroad Company (Laws 1884, pp. 936, 937).
" Helena, Memphis and New Orleans Railroad Company (Laws 1884, pp. 937, 938).
" West Point Street Railway Company (Laws 1884, pp. 941, 944).

1884. Tombigbee and Grand Trunk Railroad Company (Laws 1884, p. 950).

" Natchez and Mobile Railroad Company (Laws 1884, pp. 951, 953).

" Front and Asylum Street Railway Company (Laws 1884, pp. 955, 956).

" Mississippi River and Mexican Gulf Railroad Company (Laws 1884, pp. 957, 963).

" Rodney, Jackson and Tuscaloosa Railroad Company (Laws 1884, pp. 968, 969).

" Arkansas City, Winona and Eastern Railway Company (Laws 1884, pp. 969, 971).

" Mississippi River and Eastern Railroad Company (Laws 1884, pp. 975, 986).

" Tallahatchie Valley Railroad Company (Laws 1884, pp. 987, 992).

" New Orleans and Northwestern Railway Company (Laws 1884, pp. 994, 1004).

" Meridian and Brunswick Railroad Company (Laws 1884, pp. 1005, 1013).

" Helena, Water Valley, Aberdeen and Birmingham Railroad Company (Laws 1884, pp. 1014, 1023).

1886. Kansas City, Memphis and Birmingham Railroad Com- (Laws 1888, pp. 490, 499).

" Memphis, Birmingham and Atlantic Railroad Company (Laws 1886, pp. 203, 207).

" Pensacola and Memphis Railroad Company of Mississippi (Laws 1886, pp. 209, 221).

" Vicksburg, Yazoo-Delta and North Eastern Railway Company (Laws 1886, pp. 222, 227).

" Hill City Street Railway Company (Laws 1886, pp. 232, 235).

" Mississippi and Louisiana Bridge and Railroad Company, of Natchez, Mississippi (Laws 1886, pp. 237, 244).

" Port Gibson Female College (Laws 1886, p. 634).

" Cooper Normal College (Laws 1886, pp. 726, 727).

" Pittsboro Male and Female College (Laws 1886, pp. 734, 735).

1888. Macon, Tuscaloosa and Birmingham Railroad Company (Laws 1886, pp. 490, 499).
" Helena, Tupelo and Decatur Railroad Company (Laws 1888, pp. 500, 508).
" Brookhaven, Columbia and Mobile Railroad Company (Laws 1888, pp. 508, 509).
" Enterprise Street Railway Company (Laws 1888, p. 518).
" Vicksburg Electric Street Railway Company (Laws 1888, pp. 522, 523).
" Mississippi and Gulf Railroad Company (Laws 1888, pp. 542, 546).
" Mississippi Southern Railway Company (Laws 1888, pp. 548, 557).
" Columbus, Fulton and Eastport Railroad Company (Laws 1888, pp. 558, 563).
" Greenville and Durant Railroad Company (Laws 1888, pp. 563, 569).
" Waynesboro, Pascagoula and Gulf Coast Railroad Company (Laws 1888, pp. 570, 575).
" Greenville, Egypt Ridge and Bogue Phaliah Railway Company (Laws 1888, pp. 584, 591).
" Meridian Cotton Mills (Laws 1888, pp. 595, 596).
" Natchez Hotel (Laws 1888, p. 614).
" Deasonville High School (Laws 1888, p. 628).
" Liberty Male and Female College (Laws 1888, pp. 630, 631).
" Tombigbee Normal Institute (Laws 1888, p. 632).
" Montrose High School (Laws 1888, pp. 635, 636).
" Gulf Port Dental College (Laws 1888, p. 638).
" Mt. Carmel Normal College (Laws 1888, pp. 639, 640).
1890. Millsaps College (Laws 1890, pp. 553, 555).
" Pickens High School (Laws 1890, p. 561).
" Harper's Baptist College (Laws 1890, pp. 563, 564).
" Pleasant Hill High School (Laws 1890, pp. 569, 570).
" Hebron High School (Laws 1890, pp. 570, 571).
" Bellefontaine Male and Female High School (Laws 1890, p. 574).
" Saltillo High School (Laws 1890, p. 577).

1890. Waynesboro Normal Institute and College (Laws 1890, pp. 581, 582).
" Old Myrtle Normal College (Laws 1890, pp. 583, 584).
" Starkville Street Railway Company (Laws 1890, pp. 655, 660).
" Nashville and Mississippi Delta Railroad Company (Laws 1890, pp. 682, 687).
" Mississippi River, Alabama and Chattanooga Railroad Company (Laws 1890, pp. 703, 713).
" Greenville, Nashville and Chattanooga Railway Company (Laws 1890, pp. 732, 741).
" Columbus and Fulton Railroad Company (Laws 1890, pp. 743, 751).
" Alabama, Mississippi and Western Railroad Company (Laws 1890, pp. 751, 756).
" South Mississippi Railroad Company (Laws 1890, pp. 759, 767).
" Yazoo Delta Central Railway Company (Laws 1890, pp. 769, 778).

D

Statutes Which Have Been Construed to Repeal Exemptions from Taxation.

Chapter 22, Page 29, Acts of 1884.

An Act to amend Section 607 and 608 of Code of 1880, in relation to Privilege Tax on Railroads, and for other Purposes.

Section 1. *Be it enacted by the Legislature of the State of Mississippi,* That Section 607 of the Code of 1880 be amended so as to read as follows: Each and every railroad company which will accept this act, and annually pay to the Auditor of Public Accounts the taxes hereinafter provided for, and will signify their acceptance in writing, shall be exempt (except from the last preceding section) from the provisions of the foregoing sections of this act until otherwise ordered and provided by law, and the payment of the same shall be in full of all State and county taxes; two-thirds of which said tax shall be placed to the credit of the counties through which said railroads may pass, to be drawn by the county treasurers of the counties in proportion to the number of miles of said roads in said respective counties, *provided,* that lands owned by railroad companies and not used in operating the railroads, shall be taxable as other property, and for all purposes, any exemption of their charters to the contrary notwithstanding as to such lands. And said lands shall be listed by assessors, and taxes shall be collected by the sheriffs and paid into the State and county treasuries; *provided further* that the provisions of this act shall not have the effect to tax any of the lands of the Memphis and Vicksburg Railroad Company until the 1st day of February, 1886.

Sec. 2. *Be it further enacted,* That Section 608 of the Code of 1880 be so amended as to read as follows: Each railroad company whose line is in whole or in part in this State shall, if it accepts the provisions of this act, pay to the State Treasurer on

the warrant of the Auditor, on or before the fifteenth day of December in each and every year, a privilege tax as follows, to-wit: The Mobile and Ohio Railroad Company and branches, one hundred dollars per mile; the Chicago, St. Louis and New Orleans Railroad Company and branches, or the Illinois Central Railroad Company and branches, one hundred dollars per mile; the Memphis and Charleston Railroad Company, one hundred dollars per mile; the New Orleans, Mobile and Texas Railroad Company, or the Louisville and Nashville Railroad Company, one hundred dollars per mile; the Mississippi and Tennessee Railroad Company, one hundred dollars per mile; the Alabama Central Railroad Company, one hundred dollars per mile; the Alabama Great Southern Railroad Company, one hundred dollars per mile; the Vicksburg and Meridian Railroad Company, eighty dollars per mile; the West Feliciana Railroad Company, thirty dollars per mile; the Grand Gulf and Port Gibson Railroad Company, thirty dollars per mile; the Mississippi Valley and Ship Island Railroad Company, forty dollars per mile; the Ship Island, Ripley and Kentucky Railroad Company, twenty-five dollars per mile; the Mobile and Northwestern Railroad Company, twenty dollars per mile; the Greenville, Columbus and Birmingham Railroad Company, forty dollars per mile; the Natchez, Jackson and Columbus Railroad Company, forty dollars per mile, after expiration of exemption as provided in its charter, and acts amendatory thereof. All the railroads not named herein and not exempt from taxation by their charters, sixty dollars per mile; *provided*, that no railroad company shall be subject to taxation under this chapter while the same is in process of construction, but if any part of any road shall be finished and used for profit, the part so finished shall be taxed, although the whole road may not be finished nor where the same is now exempt from taxation by its charter.

SEC. 3. *Be it further enacted*, That Section 604 of Code of 1880, be amended by striking out all in said section after the word "purchaser" in the twentieth line.

Approved March 12, 1884.

Section 6, Chapter 2, Page 23, Acts of 1886.

SEC. 6. *Be it further enacted,* That the Act entitled "An Act to amend Sections 607 and 608 of the Code of 1880, in relation to privilege taxes on railroads, approved March 13, 1884, be so amended as to fix the amount of privilege tax to be paid by the several railroad companies mentioned and referred to in said Act at sums twenty-five *per centum* greater respectively than the sums mentioned in said Act; and hereafter said railroad companies shall pay privilege taxes respectively twenty-five *per centum* greater per mile than as fixed in said Act.

Laws of Mississippi, 1888, page 49.

CHAPTER 28.

AN ACT to provide for the assessment and collection of past due and unpaid taxes on railroads which have escaped the payment thereof.

SECTION 1. *Be it enacted by the Legislature of the State of Mississippi,* That every railroad which has failed to pay the taxes for which the same was liable, for any year for which it was so liable, such railroad not being exempt by law or its charter from taxation for such years, and so being liable to taxation, shall be assessed for, and shall pay an *ad valorem* tax, to be assessed as hereinafter provided, unless such railroad shall, within sixty days after the passage of this act, pay the taxes for which the same was liable according to its charter, or shall pay the privilege taxes for which the same was liable, as follows: If a standard or broad gauge road, for the years prior to 1884, eighty dollars per mile; for the years 1884 and 1885, one hundred dollars per mile; and for the years 1886 and 1887, one hundred and twenty-five dollars per mile; and, if a narrow gauge, or not standard, or broad gauge road, for the years prior to 1884, forty dollars per

mile; for the years 1884 and 1885, fifty dollars per mile; and for the years 1886 and 1887, sixty-two dollars and fifty cents per mile.

SEC. 2. *Be it further enacted*, That sixty days after the passage of this act, the tax-collectors of the several counties through which any railroad runs (which said railroad has failed to pay the taxes for which the same was liable and has failed to avail itself of the provisions of the first section of this act, and paid taxes according thereto) shall assess as additional assessments every such railroad, in their respective counties, for the several years for which taxes have not been paid, on assessment lists duly prepared for that purpose by the railroad commission, whose duty, it shall beto prepare such assessment lists immediately after the passage of this act; such tax-collectors shall follow the provisions of § 513 for the assessment of lands left unassessed by the assessors as nearly as practicable, and such additional assessments shall be treated in all respects as additional assessments of land would or should by law be treated; *provided*, that, to secure uniformity in valuations in such additional assessments, such tax-collectors shall, after completing such assessment lists, forward the same to the railroad commission on or before the first day of June next; and such commission shall, at the office of said commission, on the first Monday in July next, proceed to consider such assessment lists, and correct and equalize the valuations therein, and raise or reduce the same, as they shall deem just and proper, and shall hear and determine all exceptions or obligations to such assessments, which said acts and doings and determinations of said commission each railroad company interested shall take notice as well of the time and place thereof. The State and each of said railroads shall have the right to appeal from any decision of questions affecting such assessments to the circuit court of the first district of Hinds county and thence to the Supreme Court; but, if such decision be not appealed from within ten days after the final determination thereof by the railroad commission, such decision and determination shall be final and conclusive. The Attorney-General may appeal on behalf of the State, and shall have notice of, and represent the State in, any case of appeal by any such railroad; *provided*, that any railroad appealing shall give bond to be approved by such commission in double the amount of all taxes assessed

against it and all costs likely to accrue, such amounts to be fixed by the commission. Such appeals shall be heard at the first term of court and disposed of; and if judgment be rendered against a railroad appealing, it shall include the whole amount of taxes due, together with ten *per centum* damages thereon, and shall be against the railroad company, and the sureties on the appeal bond for such taxes, damages and costs.

SEC. 3. *Be it further enacted,* That the several tax-collectors in assessing such railroads, and said railroad commission in correcting and equalizing such assessments, shall be governed by the provisions of section 600 of the Code of 1880, as far as the same are applicable.

SEC. 4. *Be it further enacted,* That after the railroad commission shall have completed the correcting and equalizing said assessment list it shall cause the valuations fixed by it to be extended into columns ruled for that purpose, and such valuations shall be deemed to be the true valuation of such railroads for purposes of such taxation; said commission shall then certify and return said lists to the respective tax-collectors, who shall, upon receipt thereof, calculate and extend into the columns ruled for that purpose, the State tax for each year unpaid, and in collecting county or levee taxes, shall calculate the same from the State tax for the respective years; and they shall cause two fair copies to be made, one of which they shall deposit with their respective clerks of the board of supervisors and forward the other to the Auditor.

SEC. 5. *Be it further enacted,* That the several tax-collectors, after depositing and forwarding the copies of the assessment lists as provided in section four of this act, shall proceed to collect such taxes, State, county (and levee, if any), in the same manner as they would collect taxes on lands in like condition; and in case sales may become necessary to enforce the payment of such taxes, the same shall be made as provided in § 558 of Code of 1880, and all the provisions of law applicable to sales of land in like cases shall apply in full force; and personal property of any such railroad may be seized and sold for such taxes in like manner as the property of an individual would be liable to be seized and sold.

SEC. 6. *Be it further enacted,* That this act take effect and be in force from and after its passage.

Approved April 3, 1888.

Section 5, Chapter 2, Acts of 1890, Pages 12 and 13.

SEC. 5. That Section (1) of the Act of March 12, 1884, relating to railroad privilege taxes, be amended by striking out the last proviso thereof, and that the same be re-enacted as amended. That section two of said Act of March 12, 1884, be amended by striking out all after the word "to-wit," in line nine and inserting the following:

The Alabama Great Southern, per mile	$150 00
The Canton, Aberdeen and Nashville, per mile	100 00
The East Tennessee, Virginia and Georgia, per mile	150 00
The Georgia Pacific, per mile	100 00
The Illinois Central and branches, per mile	150 00
The Kansas City, Memphis and Birmingham, per mile	150 00
The Louisville and Nashville, or Mobile and New Orleans, per mile	150 00
The Louisville, New Orleans and Texas and branches, per mile	150 00
The Mississippi and Tennessee, per mile	150 00
The Mobile and Ohio and branches, per mile	150 00
The Memphis and Charleston, per mile	150 00
The Natchez, Jackson and Columbus, per mile	50 00
The Vicksburg and Meridian, or Alabama and Vicksburg, per mile	125 00
The West Feliciana, per mile	100 00
The Yazoo and Mississippi Valley, per mile	100 00
The New Orleans and Northeastern, per mile	150 00
The Gulf and Ship Island (Northern Division), or Gulf and Chicago, per mile	60 00
The Gulf and Ship Island (Southern Division), per mile	60 00
The Mobile and North-Western, per mile	150 00
And all other railroads constructed or to be constructed, per mile	100 00

Provided no railroad shall be subjected to taxation while exempt by its charter, nor while the same is in process of construction, or within one year after completion, but such exemption shall not be for more than three years from the date the first

rails are laid, and if any part thereof shall be finished and used for profit after such time, the same so used shall be taxed; and provided further, that if any railroad shall fail to pay the privilege tax required by law, and within the time provided by law, the same shall be assessed for taxation, and shall pay the *ad valorem* taxes levied for the year of such failure; and all the provisions of Section two, three, four and five of the Act entitled "An Act to provide for the assessment and collection of past due and unpaid taxes on railroads which have escaped the payment thereof," approved April 3, 1888, shall apply in full force in all such cases; said section two of said Act being amended by striking out the words "sixty days after the passage of this Act," in lines one and two, and by striking out the words "which said railroad has failed to avail itself of the provisions of the first section of this Act and paid taxes according thereto," in lines three, four, five, six and seven, and also by striking out the word "next" after the words "June and July" in lines twenty-two and twenty-four, respectively, and said sections of said Act as amended are hereby re-enacted.

SEC. 6. This Act shall take effect on its passage.

Approved February 24th, 1890.

Section 3379, Chapter 108, Annotated Code of 1892.

3379. *Railroads—*

Railroads are divided into four classes: First, second, third, and narrow-gauge, and privilege taxes are levied on them as follows:

On each railroad of first class, per mile	$20 00
On the second class	15 00
On the third class	10 00
On narrow gauge class	2 00

The Railroad Commission shall, annually, on or before the

first Monday in August, classify the several railroads according to the gross earnings of each, and the privilege taxes thereon shall be paid on, or before the first day of December.

Section 3875, Chapter 116, Page 860, Annotated Code of 1892.

3875. *Assessment and Taxation of Railroads; Each Company to File Schedule.*—Each railroad company owning and operating a railroad, shall, on or before the first Monday in April in each year, file with the Railroad Commission a complete schedule, under oath, of all its property, real or personal, taxable and non-taxable, setting forth therein the length in miles or fractions thereof of its entire road-bed, switches and side-tracks, and showing how many miles or fractions thereof lie in this State, and in each county of the State, and in each city, town or village, and the value of the whole and each part thereof, as subdivided herein; the total amount of capital stock, its par value and its actual value and the value of its franchise; the number of engines and their respective values; the gross amount of receipts in the year preceding; the number of cars of all kinds, their classes and value; the number of depot-buildings and warehouse and other buildings; in what county and city, town, village or levee district located, and the value of each, including the lands and lots upon which the same are built; the value of all machine and car shops and stationary machinery and tools therein, and in what county, and city, town, village, or levee district, located, including the land upon which the same are built; all real, personal, or mixed property belonging to the company within the State, not enumerated, with its value; the number of bridges and ferries in this State, in what county, city, town, village, or levee district situated, and the value of each, and specifying whether such value is or is not included in the value of the road-bed; a list of all lands in this State owned, describing the same, and giving the location and value thereof,

the quantity of land used for depots and machine shops, and its value aside from the buildings thereon; the gross amount of receipts the year preceding from passengers and freights separately, and the proportion thereof earned within and from this State; and if any of said property is claimed to be exempt from taxation, it shall be separately stated, and the law cited under which the claim is made.

Section 3877, Chapter 116, Page 861, Annotated Code of 1892.

SECTION 3877. *The Same; State Railroad Assessors.* The members of the Railroad Commission are constituted State railroad assessors, and they shall, upon the receipt or making and completion of the schedules provided for in the last two sections, assess all railroads, telegraph, sleeping-car, and express company property "*liable to taxation in the State,*" affixing its true value, so that such property shall bear its just proportion of taxation, taking into consideration the value of the franchise, the capital stock engaged in the business in this State; and the railroad assessors may adopt other and further rules necessary and proper to ascertain the value of property to be assessed by them, including the amount of capital engaged in the business in this State.

Section 3744, Chapter 116, Page 830, Annotated Code of 1892.

3744. *What Property Exempt.*—The following property, and no other, shall be exempt from taxation, to-wit:

(a) All cemeteries used exclusively for burial purposes.

(b) All property, real or personal, belonging to the United States.

(c) All property, real or personal, belonging to this State, or to any county or municipal corporation thereof.

(d) All property, real or personal, belonging to any religious or charitable society, or incorporated institution for the education of youth, used exclusively for the purpose of such society or institution, and not for profit.

(e) All property, real or personal, held and occupied by the trustees of schools, and school-lands of the respective townships for the use of public schools.

(f) Property appropriated to and occupied and used for any hospital or charitable institution.

(g) Wearing apparel of every person, not including jewelry or watches.

(h) Provisions on hand necessary for family consumption.

(i) All farm products, raised in this State, in the hands of the producer.

(j) One gun (for each owner) kept in private use.

(k) All poultry.

(l) Household furniture not to exceed two hundred and fifty dollars in value.

(m) Two cows and calves.

(n) Ten head of sheep or goats.

(o) All colts, foaled in this State, under three years old.

(p) Farming implements used for agricultural purposes.

(q) All property of agricultural and mechanical associations and of fairs used for promoting their objects.

(r) The libraries of all persons.

(s) All pictures and works of art not kept or offered for sale as merchandise.

(t) The tools of any mechanic necessary for carrying on his trade.

(u) Ten head of hogs; and

(v) All permanent factories hereafter established in this State before the first day of January, 1900, for working cotton, jute, ramie, wool, silk, furs, metals, and all other manufacturing implements or articles of use in a finished state shall be exempt from taxation for a period of ten years. Any factory which has been abandoned for not less than three years, and commencing operations within two years from November 1st, 1896, shall be entitled to such exemption. A corporation, or person claiming exemption under this paragraph (v) shall apply in writing to the

Auditor of Public Accounts, giving full information as to the property proposed to be exempted, the kind of articles to be manufactured; and the Auditor, with the written advice of the Attorney General, shall determine whether the property is exempt. The Auditor shall notify the assessor of the county or municipality, in writing, of his decision in the premises, stating distinctly the property to be exempted and the date when the exemption begins and ends. A factory or manufactory belonging to or being a trust, combine, or pool, shall not enjoy exemption from taxation.

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MISSISSIPPI CONSTITUTION 1869.

Article XII., Section 13.—The property of all corporations, for pecuniary profit, shall be subject to taxation, the same as that of individuals.

Article XII., Section 20.—Taxation shall be equal and uniform throughout the state. All property shall be taxed in proportion to its value, to be ascertained as directed by law.

MISSISSIPPI CONSTITUTION 1890.

Section 181.—"The property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as the property of individuals, but the legislature may provide for the taxation of banks and banking capital, by taxing the shares according to the value thereof (augmented by the accumulations, surplus, and unpaid dividends), exclusive of real estate, which shall be taxed as other real estate. Exemptions from taxation to which corporations are legally entitled at the adoption of this constitution, shall remain in full force and effect for the time of such exemptions as expressed in their respective charters, or by general laws, unless sooner repealed by the legislature. And domestic insurance companies shall not be required to pay a greater tax in the aggregate than is required to be paid by foreign insurance companies doing business in this state, except to the extent of the excess of their *ad valorem* tax over the privilege tax imposed upon such foreign companies; and the legislature may impose privilege taxes on building and loan associations in lieu of all other taxes except on their real estate."